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EDWARD DOUGLAS WHITE, SR., GOVERNOR OF LOUISIANA, 1835-1839

By DIEDRICH RAMKE

Edward Douglas White, Senior, was quite an important character in Louisiana politics during the second quarter of the nineteenth century, although the subsequent and more outstanding achievements of his son, the late Chief Justice Edward Douglas White, have somewhat obscured the career of the elder statesman. The subject of this article was the son of James White who was a native of Pennsylvania. The father was born in Philadelphia, June 16, 1749. After attending the Jesuit college at St. Omar in France, he studied medicine and law at the University of Pennsylvania,[1] and he seems to have been a practitioner of both these professions.[2] Exactly when he removed to North Carolina is not certain, but he settled there early enough to be elected to the lower house of the legislature as one of the representatives from Currituck County in 1784.[3] He was re-elected to the legislature the following year.[4] The matters which came before the general assembly during this period were not such as would reveal the attitude of members on outstanding public questions of the day. It is significant, however, that in the May session of the legislature for 1784, White voted against the bill ceding North Carolina's western lands to the United States. He was also one of the members who signed a resolution citing a list of reasons why the cession of the western lands should

[1] *Knoxville Sunday Journal*, July 7, 1929; Albert V. Goodpasture, "Dr. James White, Pioneer, Politician, Lawyer," in *Tennessee Historical Magazine*, vol. I, p. 283.
[2] *State Records of North Carolina*, Walter Clark, ed., (Goldsboro, N. C., 1899), vol. XIX, pp. 512, 551, 571; vol. XX, p. 138.
[3] *Idem*, vol. XIX, pp. 489, 717.
[4] *Idem*, vol. XVII, p. 264.

not be made until the public sentiment of the State on this question could be ascertained.[5] The fact that White voted affirmatively on a bill providing for the emission of one hundred thousand pounds of paper currency by the State of North Carolina[6] is probably indicative of his attitude as to what the public policy should be with reference to monetary matters. It should be remembered that at this time a number of the States were resorting to the practice of issuing paper money in an attempt to relieve the financial stringency then prevalent, a practice greatly in favor with the frontier population which was preponderantly of the debtor class.

On December 12, 1785, White was elected by a majority vote of both houses of the legislature as a delegate to Congress for the ensuing year.[7] He was, however, rather slow in assuming his official duties as delegate, a fact which elicited a letter of remonstrance from Governor Richard Caswell. The Governor remarked that the State of North Carolina was wholly unrepresented in Congress and stated further that it was the intention of the legislature that three of the State's six delegates should be in attendance during the first six months and the remaining three for the last six months of the year for which they were elected, it being left to the delegates as to how they should divide their time. When such an arrangement had not been agreed upon it was customary for those delegates whose names were first in nomination to "go forward" immediately. The Governor threatened action by the State council should this delinquency in public duty continue. He observed that at recent sessions of Congress only seven States had been represented, and since the presence of representatives from nine States was required for the transaction of most matters, the body was practically impotent to perform its duties.[8] This observation is instructive in that it illustrates the lack of interest of many of the delegates in the activities of the ineffective Confederation Congress.

White finally presented his credentials and took his seat in the Confederation Congress on May 2, 1786.[9] He was, however, in continuous attendance until his appointment as Superintendent of Indian Affairs for the Southern District, comprising the States of North Carolina, South Carolina, and Georgia.[10] There were very

[5] *Idem*, vol. XIX, pp. 804, 717.
[6] *Idem*, vol. XVII, p. 406.
[7] *Idem*, vol. XX, p. 50.
[8] *Idem*, vol. XVIII, p. 569.
[9] *Ibid.*, p. 601; *Journals of the Continental Congress, 1774-1789*, (Washington, 1904), vol. XXX, (1934), pp. 228, 229.
[10] *State Records of North Carolina*, vol. XVIII, p. 756.

few matters of importance considered by Congress during this period of his attendance. Perhaps the most important subject upon which this body deliberated was the question of ratifying a treaty of amity and commerce between the United States and Prussia; and in this instance White voted in the affirmative.[11]

On October 10, 1786, four days after his election to the Superintendency of Indian Affairs, White was ordered by resolutions of Congress to repair to his district immediately and to adopt measures for the pacification of the Indians who, it seems, had evinced a hostile disposition toward the settlers along the frontier.[12] He had been nominated for this position by Arthur St. Clair. It was provided that an oath taken before a judge of any State supreme court would be sufficient for his assumption of office.[13] Indian affairs at this time constituted a problem of great delicacy, requiring of an agent energy, courage, tact, and diplomacy.[14] Mr. T. P. Abernethy considers the selection of White for the office a peculiar choice, since his competitor for the position, Joseph Martin, was a man of wide experience in dealings with the savages, having been Indian agent for the State of Virginia, and had the backing of Patrick Henry.[15] White was accorded a vote of thanks by the legislature of North Carolina at its November session in 1786; and on November 17 he was again elected as a delegate to Congress for the ensuing year, which he devoted largely to his duties as Superintendent of Indian Affairs.[16] On December 17 of this year he was again elected as a delegate to the Confederation Congress.[17]

In August, 1786, White had a conversation with the Spanish minister, Don Diego Gardoqui, in which he was reported to have told the representative of Spain that the Western people were intensely interested in the navigation of the Mississippi River and that they greatly resented John Jay's proposal to abandon all rights to the use of this stream for a period of twenty-five years. He suggested that the frontiersmen would probably secede from the Union and put themselves under the protection of Spain in return for the free use of the river.[18] Abernethy says that there

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[11] *Journals of the Continental Congress*, vol. XXX, p. 285.
[12] *State Records of North Carolina*, vol. XVIII, p. 760.
[13] *Journals of the Continental Congress*, vol. XXXI, p. 747.
[14] A. V. Goodpasture, "Dr. James White", *loc. cit.*, vol. I, p. 284.
[15] T. P. Abernethy, *From Frontier to Plantation in Tennessee: A Study in Frontier Democracy*, (Chapel Hill, 1932), pp. 93-94.
[16] *State Records of North Carolina*, vol. XVIII, pp. 105, 337.
[17] *Idem*, vol. XX, p. 244.
[18] A. P. Whitaker, *The Spanish-American Frontier: 1783-1795*, (Boston and New York, 1927), p. 80.

is no evidence that White had ever visited the section for which he was speaking, and that this conversation was the suggestion of William Blount.[19] Gardoqui maintained a keen interest in the Western situation, and late in 1787 he renewed his conversations with White on the subject.[20]

White's duties as Superintendent of Indian Affairs had brought him into close contact and sympathetic relations with the people of the Southwest, among whom he had decided to make his home. The two most pressing problems confronting the frontier settlements at this time were the Indian depredations and the navigation of the Mississippi River. He clearly saw the advantages to be obtained in the solution of these problems through an alliance with Spain. His interviews with Gardoqui had undoubtedly convinced him of the improbability of securing relief through negotiations between the United States and the Spanish Government; while, on the other hand, he was aware of the fact that Spain could, by a mere gesture, stay the depredations and remove the impediments to the navigation of the Mississippi. All that was required of the Westerners was that they should put themselves under the protection of Spain. Accordingly about May 1, 1788, he resigned his office as Superintendent of Indian Affairs and entered the service of Spain, agreeing to incite the people of Franklin to terminate their connection with the United States and ally themselves with the Spanish Government.[21] In regard to White's course of action, Mr. Goodpasture says: "At this distance his conduct may appear disloyal and unpatriotic, but it did not seem so to the people of Franklin and Cumberland in 1788. They saw distinctly the causes of their suffering, and felt intensely the failure of their government to remedy them."[22]

Gardoqui urged upon White the necessity of setting out for Franklin immediately. News had just been received of John Sevier's defeat by Colonel John Tipton of North Carolina, and it was felt that this repulse would render the turbulent frontiersman more favorably inclined to the plan of a Spanish alliance. According to White's own statement he found, upon his arrival in Franklin, that conditions were more favorable than had been anticipated. Sevier, together with Blount and other North Carolinians, had been interested for some time in a speculative land

[19] T. P. Abernethy, *From Frontier to Plantation in Tennessee*, p. 93.
[20] A. P. Whitaker, *The Spanish-American Fontier*, p. 86.
[21] A. V. Goodpasture, "Dr. James White", *loc. cit.*, vol. I, pp. 284-85.
[22] *Ibid.*

project in the Muscle Shoals region. These speculators had decided that the successful maturation of their scheme could best be secured by a separation from the State of North Carolina and an alliance with Spain.[23] Concerning this secret mission White reported that he had been given letters by Gardoqui to the leading men of the district together with instructions that should they be desirous of putting themselves under the protection of Spain they should be guaranteed civil and political government in the form most suitable to them on the following conditions: first, that it should be absolutely necessary, not only for the holding of any office but also for the ownership of land, that an oath of allegiance be taken to his Catholic Majesty, the purport of which should be to defend his government and faithful vassals against all enemies whoever they might be; and second, that the inhabitants of the district should renounce all submission or allegiance to any other power. White stated that the people of both the Franklin and Cumberland districts had eagerly accepted these conditions.[24] After these preliminaries White returned to New York and reported to Gardoqui that the affair was progressing favorably; that the principal inhabitants of the district were anxious for separation, ready to swear allegiance to Spain, and willing to defend the province of Louisiana from attack from any quarter, reserving only the privilege of governing themselves as they saw fit.[25] White was then sent by Gardoqui to New Orleans, by way of Havana, to continue his negotiations with Don Estevan Miro, Governor of Louisiana. White was eager to secure an extension of the limits of the new State of Franklin down the Tennessee River to include the Muscle Shoals region, and he sought to obtain from the Spanish authorities the right of the colonists of this new State to the free navigation of both the Alabama and Mississippi Rivers.[26]

Shortly after his arrival in New Orleans White notified Miro that, since he was in the service of Spain, he thought his expenses should be paid out of the royal treasury, and requested a grant of about $400 in order to facilitate his dealing more decently and commodiously with those whom he was expected to influence. The sum was immediately granted.[27] While White was still in New

[23]A. P. Whitaker, *The Spanish-American Frontier*, p. 109; A. V. Goodpasture, "Dr. James White", *loc. cit.*, vol. I, p. 286.
[24]Charles Gayarré, *History of Louisiana*, (New Orleans, 1903), vol. III, pp. 258-259; Archibald Henderson, "The Spanish Conspiracy in Tennessee", in *Tennessee Historical Magazine*, vol. III, pp. 231-232.
[25]Charles Gayarré, *History of Louisiana*, vol. III, p. 261: A. V. Goodpasture, "Dr. James White", *loc. cit.*, vol. I, p. 287.
[26]A. P. Whitaker, *The Spanish-American Frontier*, p. 110.
[27]Charles Gayarré, *History of Louisiana*, vol. III, p. 259.

Orleans, Governor Miro received communications from James Robertson and Daniel Smith informing him that the separatist movement in the West was very strong and promising that definite action would soon be taken. In reply to White's application for assistance from the Spanish authorities, the Governor gave him a paper promising favors in the form of reduced duties on products sent down the river. The general impost level was to be reduced to 15 per cent, with special concessions in cases of men of importance to be named by White. Miro refused to furnish assistance to the Westerners in attaining their independence; but promised that in the event of the attainment of their separation they should be accorded all the privileges granted to natives of the Spanish colonies. He sought to induce the frontiersmen to settle within the limits of Spanish territory, a policy entirely at variance with the plans of the Western land speculators. Verbally he urged an energetic movement on the part of the Westerners for the acquisition of their independence.[28] No assurance was given, however, as to what type of aid would be offered by Spain to assist the people of Franklin in their efforts at separation, and no definite commitment was made in regard to their treatment by Spain after the acquisition of independence. Seeing that no aid could be obtained from the Spanish Government, Sevier and his associates abandoned their plans for separation.[29] Upon the failure to reach an agreement with Spain White returned to the Franklin district and became very influential in counteracting the separatist tendency in this region.[30]

The second act of cession passed by the legislature of North Carolina in December, 1789, formed a serious obstacle to the fruition of the plans of the Western leaders. Instead of securing an act of separation and independence, they now found themselves thrown bodily into the arms of the Federal Government. The deed of cession was accepted by the United States on April 2, 1790; and the Territory Southwest of the River Ohio was organized on May 26 of the same year. "Despite the unequivocal offer of the calculating and desperate Sevier," comments Mr. Henderson, "to 'deliver' Franklin to Spain, and the ingenious efforts of Robertson and his associates to place the Cumberland region under the domination of Spain, the Spanish court by its temporizing policy of evasion and indecision definitely relinquished the ready oppor-

[28] *Ibid.*, vol. III, pp. 263-264; A. V. Goodpasture, "Dr. James White", *loc. cit.*, vol. I, pp. 287-288.
[29] A. P. Whitaker, *The Spanish-American Frontier*, p. 111.
[30] *State Records of North Carolina*, vol. XXII, p. 792.

tunities thereby afforded, of utilizing the powerful separatist tendencies of Tennessee for the purpose of adding this empire upon the Western waters to the Spanish domain in America.[31]

After his return from New Orleans in 1789, White was once more elected to the lower house of the North Carolina legislature; this time as a representative from Hawkins County.[32] He seems to have played a rather important part in the planning and directing of legislation, judging from the number of committees upon which he was appointed to serve.[33] He was likewise elected a delegate from the same county to the State convention which met on the third Monday in November to determine whether North Carolina would accept the new Constitution of the United States.[34] White voted against the amendments which were proposed, and voted for the ratification of the Constitution which carried by a majority of 195 to 77 votes.[35]

When the population of the Territory Southwest of the River Ohio became sufficiently numerous to entitle it to a legislature in 1794, White was elected to the general assembly as a representative from Davidson County. To him is due the honor of being the first to foster a legislative act for the promotion of an institution of learning in the territory. In August, 1794, he introduced a bill providing for the establishment of a school in Greene County, to be known as Greeneville College. On September 3 he was elected a delegate to Congress from the territory by a majority vote on joint ballot of both houses of the legislature.[36]

The presentation by White of his credentials as a territorial delegate to the lower house of Congress evoked quite a discussion in that body. This was the first instance of territorial representation in the National Legislature. On November 11, 1794, White's credentials were presented to the House by the Speaker and a special committee was appointed to consider the matter contained therein and report its opinion to the House.[37] On November 17 the committee reported that the right of such representation was authorized by the ordinance providing for the government of the territory northwest of the Ohio River. This ordinance stipulated that when the free male population should attain the number of

[31] Archibald Henderson, "The Spanish Conspiracy in Tennessee", *loc. cit.*, vol. III, p. 243.
[32] *State Records of North Carolina*, vol. XXI, p. 194.
[33] *Idem*, vol. XIX, pp. 581, 605.
[34] *Idem*, vol. XXII, p. 37.
[35] *Ibid.*, pp. 47, 48.
[36] A. V. Goodpasture, "Dr. James White", *loc. cit.*, vol. I, pp. 289-290.
[37] *Annals of Congress*, Sessions of 1793-95, p. 873.

five thousand the people should be entitled to elect a general assembly. The legislature should have the power to elect a delegate to represent the territory in Congress, who should be entitled to a seat and should have the right of debating but not of voting. The ordinance had been confirmed by act of Congress in 1789, and by the deed of cession of 1790 the privileges of representation contained therein had been extended to the territory south of the Ohio River.[38]

The report of the select committee for admitting White was considered by the House in committee of the whole, where a number of objections were raised. One member could find no justification in the Constitution for the admission of such a delegate as White would be; he contended that to admit him would be setting a bad precedent, since the representative of a foreign power could be admitted with equal propriety. Another member pointed out that the House could admit any person it might see fit for the purpose of debate. It might admit the Secretary of State. Still another, Elias Boudinot, thought that he ought to be sent to the house whose members were elected by legislatures—that is, the Senate—since he had been elected by a legislature. William Vans Murray thought that the matter should have been referred to a joint committee of both houses, since the delegate might be entitled to a seat in both branches of the legislature. Abraham Baldwin said that he "could see nothing in the new Constitution that made an exclusion of the delegate from the Southwest of the Ohio. This privilege had been solemnly promised those people, upon three different occasions. When they belonged to the State of North Carolina, they sent a representative (Mr. Sevier), to Congress; and they separated into a new State, under the promise of this privilege."[39] The committee of the whole accepted the report of the select committee and the House then adopted this report. James Madison pointed out that White was not a member of Congress and need not take an oath unless he agreed to do it voluntarily. An objection was raised to this view, but Madison's contention was upheld.[40] A select committee was then appointed to draft a bill providing for White's compensation and granting him the franking privilege.[41] Such a bill being presented, it was passed without opposition.[42] Although White had been granted the right

[38] *Ibid.*, pp. 888 *ff.*
[39] *Ibid.*, pp. 884-888.
[40] *Ibid.*, p. 890.
[41] *Ibid.*, p. 891.
[42] *Ibid.*, p. 914.

of speaking or debating on any measure which might be pending before the House, there is no record of his ever having availed himself of this privilege. This does not necessarily mean, however, that he was not attentive to the needs of his constituents, for there were abundant opportunities of making his views known in consultations with individual members and before committees; and perhaps these methods were more effective in securing the desired ends.

On going to Congress White had presented a memorial requesting that the inhabitants south of the French Broad be included within the territory, and citing instances where persons in this region had suffered from Indian depredations. He was promised by a member of Congress late in 1794 that a bill would be introduced providing for the erection of the Southwest Territory into a State; but, after polling the members on this question, the territorial delegate was convinced that such a measure would not be passed. He thereupon advised the Governor of the territory that the taking of a census be ordered for the purpose of ascertaining whether the population had attained the number of sixty thousand free persons—the minimum stipulated in the deed of cession required for the attainment of Statehood. Should there be the requisite number, he suggested that a State constitution be drafted for submission to Congress. It was found that the population exceeded the required minimum, and a call was issued for the election of delegates to a constitutional convention. An interesting circumstance in connection with the organization of the State of Tennessee was the provision that in case Congress should refuse to admit the new State into the Union, it should then exist as an independent commonwealth. The contention was that Congress had no option in the matter of recognizing Statehood, since, according to the stipulations of the deed of cession, this status was attained automatically upon the free population reaching the number of sixty thousand.[43] Tennessee was admitted into the Union as a State on June 1, 1796, and White's term as territorial delegate automatically expired.[44]

In 1798 White migrated to the city of New Orleans in the Spanish colony of Louisiana, and the following year he moved to what is now St. Martin Parish.[45] After the purchase of Louisiana by the United States in 1803 and the organization of the Territory

[43] A. V. Goodpasture, "Dr. James White", *loc. cit.*, vol. I, pp. 290-291.
[44] *Knoxville Sunday Journal*, July 7, 1929.
[45] *Ibid.*; *Biographical Directory of the American Congress, 1774-1927*, p. 1689.

of Orleans, "he was, in 1804, appointed Judge of the Attakapas district and later of St. Martin Parish." He died in October, 1809, and was buried at Attakapas.[46]

Edward Douglas White, son of James White, was born in Nashville, Tennessee, in March, 1795.[47] He was three years of age when his father migrated to Louisiana; and fourteen when his father died in 1809. The writer has been able to discover very little material bearing on the early years of Edward White. W. H. Sparks, writing some years after White's death, in speaking of this period of his life, said that "he struggled on in the midst of a people whose very language was alien to his own, and managed to acquire a limited education."[48] This statement, however, is probably not entirely correct; for James White, the father, was thoroughly familiar with the French language, having studied in France, and the son probably received early training in the dominant languages of the section in which he lived, for in early manhood he spoke both French and Spanish with great fluency.[49] Neither does his education seem to have been very limited, for he attended the University of Nashville and was graduated from that institution in 1815.[50] After leaving college, it is said that he studied law in the office of Alexander Porter,[51] although definite information on this point is lacking. He began the practice of his profession at Donaldsonville, Louisiana. His rise to distinction was rapid; and in 1825 he was considered worthy of a judgeship in the city of New Orleans. In February, 1825, the legislature passed a law abolishing the justice of the peace courts in New Orleans and creating a single city court which should consist of five judges, the offices to be filled by gubernatorial appointment. White was immediately appointed presiding judge, with four associates.[52] Shortly thereafter the police jury of the parish of Orleans ordered the several judges to hold special sessions at assigned locations throughout the city. White was ordered to hold separate sessions at the Government House in the hall of the Senate where the

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[46] *Knoxville Sunday Journal*, July 7, 1929; A. V. Goodpasture, "Dr. James White", *loc. cit.*, vol. I, p. 291.

[47] Alcée Fortier, *Louisiana*, (Atlanta, 1909), vol. II, p. 639; *Biographical Directory of the American Congress*, p. 1689; *Knoxville Sunday Journal*, July 7, 1929.

[48] W. H. Sparks, *The Memories of Fifty Years*, (Philadelphia, 1870), p. 459.

[49] *Louisiana Advertiser*, April 22, June 6, 1834.

[50] *Biographical Directory of the American Congress*, p. 1689.

[51] Alcée Fortier, *Louisiana*, vol. II, p. 639.

[52] *Courier*, February 21, 1825.

regular sittings of the court were also held.[53] He retained this judicial position for three years, resigning early in 1828 to retire to his sugar plantation in Lafourche Parish.[54]

The writer has been unable to make a detailed investigation and appraisal of this portion of White's public career, but his supporters were fulsome in their commendations of his judicial services. "As presiding judge of the city court," it was said, "he obtained the entire confidence of the Bar and of the public; so much so, that suits were generally instituted before him, in preference to either of the other courts. He was remarkable for his assiduity, his patience in investigation, and his decision; and that his judgments were generally correct, may be inferred, from the few appeals taken from his decisions."[55] "The bench may well have been proud of so able a jurist;" said a Baton Rouge paper, "and when the sacred ermine of justice fell upon other shoulders, it fell upon none more pure, thoroughly imbued with the spirit of judicial research, and none more animated with an ardent desire of bringing to his aid the learned lore of former ages. In his person as a judge, was confined the essential qualities of imparting 'equal and exact justice to all men, of all ages, sects and condition of the people.' "[56]

His retirement was of brief duration, however, for on April 19, 1828, a notice was published announcing E. D. White's candidacy for a seat in Congress to represent the first Congressional district.[57] White was an Administration candidate—that is, he represented the faction which supported the candidacy of John Quincy Adams who was seeking re-election to the Presidency of the United States.[58] He was opposed by Edward Livingston, the incumbent, and a staunch supporter of Andrew Jackson. The election which took place in July resulted in a victory for White, Livingston being defeated by a majority of six hundred votes.[59]

White does not seem to have participated very actively in legislation during his first term in Congress. He did sponsor, however, a bill amendatory to an act providing for the regulation of the practice of Federal courts in the district of Louisiana.[60] White

[53] *Ibid.*, February 28, 1825.
[54] Alcée Fortier, *Louisiana*, vol. II, p. 639.
[55] *Louisiana Advertiser*, January 30, 1834.
[56] Baton Rouge *Gazette*, June 14, 1834.
[57] *Courier*, April 19, 1828.
[58] New Orleans *Bee*, June 18, 1828.
[59] W. H. Sparks, *The Memories of Fifty Years*, p. 459; *Pennsylvanian*, quoted in New Orleans *Bee*, August 6, 1834.
[60] New Orleans *Bee*, June 7, 1830.

voted in opposition to the Indian bill, a measure providing for the removal of approximately 70,000 Indians from their homes and their settlement in the region west of the Mississippi River. The act was passed, however, by a vote of 102 to 98. It was an Administration measure and the vote was almost entirely along party lines. White's opposition was natural, since he was opposed to Jackson's administration. The law was condemned, however, by some of the Democratic-Republican papers of Louisiana as harsh and unjust, and as consummating an act of treachery on the part of the Executive.[61]

White was a candidate for re-election in 1830[62] without opposition, the Democrats evidently deeming it useless to nominate an opponent. A comparison of the vote received by White with the total vote cast in his district will demonstrate his popularity with his constituents. In the parish of Orleans White received 997 votes, while the combined vote of the four gubernatorial candidates was 1241.[63] In Plaquemines Parish he received a unanimous vote, while in Jefferson Parish he received 89 out of a total of 90 votes cast, and in St. Bernard Parish where the returns showed a total vote of 157, White received 147 votes.[64]

The questions which confronted Congress during White's second term were more productive of public discussion than were those of his preceding term. White was always attentive to the interests of his immediate constituents, especially in matters concerning the commercial prosperity of the city of New Orleans. On his motion a resolution was adopted in January, 1932, ordering the Committee on Internal Improvements to investigate the advisability of extending the provisions of a previous act to include the removal of the bar at the mouth of the Mississippi River and the deepening of the channel of that river.[65]

The most controversial questions confronting Congress during this second term were the Tariff bill of 1832, the question of the re-charter of the United States Bank, and the Compromise Tariff bill of 1833. On the first of these measures White voted in the negative, although the bill passed the House by an overwhelming majority, the vote being 132 to 65.[66] The Louisiana delegation in

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[61] *Ibid.*, June 19, 1830.
[62] *Ibid.*, June 25, 1830; *Courier*, June 30, 1830.
[63] *Courier*, July 9, 1830.
[64] *Ibid.*, July 8, 1830.
[65] New Orleans *Bee*, January 24, 1832.
[66] *Louisiana Advertiser*, July 13, 1832.

Congress was equally divided on this question, both the Senators favoring the passage of the measure, while White and the other Representative voted in opposition to the act.[67] The position of the two Representatives was that the measure, which provided for a reduction in the sugar duty of one-half cent per pound, would be injurious to the planting interests and adverse to the general prosperity of the State. The *Bee*, however, contended that the planters had no fears on this score. They admitted, it said, that the contemplated reduction might prostrate a few establishments, those which were the mere creatures of legislative action and which had been artificially nurtured by the unusually high sugar duty; but, it was contended, the proposed reduction would not work any permanent injury to the well-established planting interests. "The question," the *Bee* concluded, "in the present crisis, is, what, under present circumstances, ought we now to do? What ought the manufacturers, having especial regard to their own interests, to do? We may philosophize and declaim about the importance of union to our own national glory and independence, but this pageant of patriotism will be powerless to allay the discontents that have sprung from the present system.—What, then, ought to be done? The language of Messrs. White and [Henry Adams] Bullard, is, the south ought to cease its murmurings against a policy which is obviously subversive of its interests, and under which they have for a long time groaned, lest the slightest modification should occasion temporary suffering among those who have benefited of it. And this is 'concession!' "[68]

White was a staunch supporter of the United States Bank and consequently voted for its re-charter in 1832.[69] He never lost an opportunity during the remainder of his political career of advocating strenuously the continuance of such a financial institution. Although the *Louisiana Advertiser* vigorously supported White's gubernatorial candidacy, it bitterly attacked the passage of this measure, declaring that never before had an act been so arbitrarily forced through Congress. All debate on the question was shut off except upon an amendment proposed by George McDuffy. "Congress has resigned," concluded the *Louisiana Advertiser*, "for fifteen years, to the Bank directors and stockholders, the power of regulating the currency which, the friends of the measure assert,

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[67] New Orleans *Bee*, July 24, 1832.
[68] *Ibid.*, July 14, 1832.
[69] *Louisiana Advertiser*, July 18, 1932.

was confided to the representatives of the people by the Constitution. They claim the power, it seems, merely to divest themselves of it."[70]

In the election of 1832, although White was still unopposed, his vote in New Orleans was not nearly so large[71] as in 1830, being only 318 as compared with 997 in the previous election; but in Jefferson Parish he received 136 out of a total of 137 votes cast for State officials.[72] It might be argued, however, from the New Orleans vote that there was a waning enthusiasm for White on the part of the most powerful group of his constituents.

Shortly after his return from Washington in the late summer of 1832 White addressed a gathering in New Orleans at a luncheon held in his honor. He reviewed the various acts of the recent Congress and held that the policy of the Federal Government toward the State of Louisiana had been, on the whole, beneficent, although he considered the trifling reduction in the sugar duty to be unjust and impolitic; and it was on this ground that he had voted against the measure on final passage. "In other words," commented the *Bee*, "it was 'unjust and impolitic' that Louisiana should, with her sister states, make the slightest concession to the murmurings and complaints of an entire section of the Union. It was 'unjust and impolitic' to relieve the people of $13,000,000 of unnecessary taxation."[73] In the next session of Congress White voted for the Compromise Tariff which also provided for a reduction of the sugar duty. It is interesting to note that on the question of the passage of the second tariff act the relative positions of the Congressman and the *Bee* were exactly reversed. Concerning the first tariff measure the *Bee* maintained that "The planters of Louisiana would never have censured our delegates in Congress had they voluntarily made such an offer upon the shrine of patriotism, to restore harmony among the alienated members of the confederacy."[74] The same paper severely condemned White for having voted in favor of the Compromise Tariff. He had shamefully compromised the interests of his constituents and subjected to ruinous competition an industry upon which the future welfare of the State depended. "She had embarked largely in the business of sugar making, depending on the faith of the govern-

[70] *Ibid.*
[71] *Ibid.*, July 5, 1832.
[72] *Ibid.*
[73] New Orleans *Bee*, September 8, 1832.
[74] *Ibid.*

ment as a guarantee for the sacrifices she had made."[75] White justified his reversal of position on the ground that the attendant circumstances were unusual and that it was necessary to submerge selfish interests to avert a National crisis.[76] White's position was undoubtedly the more tenable of the two, for of the two situations that of 1833 certainly presented more cogent reasons for sinking private considerations in the interest of National peace and harmony.

Although White served but one session of his third term in Congress, this period seems to have been the most active of his Congressional career. He fostered a bill providing for a lighthouse at the entrance of Bayou St. John, and also proposed an appropriation for the salary and office rent of the surveyor of Port Pontchartrain.[77] This same bill had previously been introduced, but had failed of passage because of the congested calendar during the preceding session. He also secured the adoption of a resolution instructing the Committee of Ways and Means to inquire into the expediency of enclosing the lot of the Custom-house and the Federal court in the city of New Orleans.[78]

White's interest in the promotion of scientific investigations is illustrated by the case of the inventor, Benjamin Phillips. Phillips memorialized Congress for aid in testing the practicability of an improved type of steam engine devised by himself. When the memorial was presented, White said that he was personally acquainted with Phillips and had some knowledge of the nature of the invention. He therefore moved that the memorial be referred to a select committee, upon which he was given membership.[79] White submitted the report from the select committee, describing the improvements in the new type of engine which would lessen the likelihood of explosions, and proposing that an appropriation be set aside for experimentation under the supervision of the Secretary of the Navy. The appropriation was accordingly granted.[80]

He was interested in securing for Louisiana allotments of public lands equal to those given other Western States as shown by the following resolution:

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[75] *Ibid.*, January 29, 1834.
[76] *Ibid.*, February 3, 1835.
[77] *Congressional Globe*, 1833-34, 23 Cong., 1 Sess., p. 302.
[78] *Ibid.*, p. 116.
[79] *Ibid.*, p. 310; *National Gazette*, April 19, 1834.
[80] *Cong. Globe*, 23 Cong., 1 Sess., p. 416.

"Resolved, That the Committee on Public Lands be instructed to inquire into the expediency and justice of granting to the State of Louisiana, in aid of internal improvements, the same extent of land which has heretofore been granted by Congress to other Western States, and particularly to the State of Alabama."[81] The niggardliness of the Federal Government in its public land policy toward Louisiana as compared with its policy in other new States with respect to the public domain furnished a theme for repeated complaints by Louisiana statesmen until an adjustment was finally made during the decade prior to the outbreak of the Civil War.

White persevered in his efforts for a modification of the Federal land policy toward Louisiana, and his political opponents admitted that it was through his activity that the Federal land offices were reopened in that State.[82] During his last session in Congress prior to his accession to the gubernatorial chair, White secured the passage of a number of bills providing for the adjustment of land titles of Louisiana citizens whose claims were derived from old Spanish grants. He also successfully sponsored a measure with reference to pre-emption rights in the southeastern district of Louisiana.[83] Near the close of the session of 1833-34 he secured the settlement of land claims of citizens of the Florida Parishes.[84]

On May 17, 1834, White offered an amendment to add $20,000 to the appropriation of $30,000 for the improvement of the navigation of Red River. He made a very effective speech in defense of this amendment, stating very succinctly his reasons for the increase. "The improvement contemplated by the bill," he said, "is the removal of the great raft of Red River. As to the importance of this work, I will not enlarge at this time of day, considering as I do, that matter as ascertained and determined by the fact of the Government having heretofore undertaken it, and voted sums of money for its execution. If, however, I were to speak on that subject, I could say, without any fear as to the precision of the remark, that, in point of interest and value, in all general, national respects, the enterprise is secondary to none of similar nature which the United States ever have had, or probably ever will have, occasion to lend their countenance and support." After detailing the commercial and military reasons for the undertaking, he con-

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[81] *Ibid.*, p. 50.

[82] *Register of Debates in Congress*, vol. X, pt. III, p. 3841; Baton Rouge *Gazette*, May 31, 1834.

[83] New Orleans *Bee*, October 10, 1832.

[84] Baton Rouge *Gazette*, March 29, 1834; *Louisiana Advertiser*, March 19, 1834.

tinued: "All my convictions lead me to wish to see the requisite sum voted at once. In submitting for the bare $50,000, I defer to the apparent disposition which obtains to do things, I would not say economically, but parsimoniously. I fall in with the spirit of the times. I have confined myself to the very narrowest limits which my sense of duty will allow."[85] The appropriation was finally increased to $100,000 and the measure was adopted.[86]

On April 28 White availed himself of an opportunity of stating his views on the question of a National Bank in the presentation of "memorials from citizens of Louisiana representing the existence of much embarrassment and distress in that State, and disapproving of the course of the Administration in relation to the United States Bank."[87] After discussing the general distress which obtained in New Orleans, he proceeded to paint a glowing picture of conditions as they existed when, as he said, "the inauspicious blow fell." The failure to re-charter the United States Bank and the withdrawal of the Government's funds from this depository were followed by acute financial distress. The petitioners, he said, desired the removal of the offending cause which would be a cessation of hostilities against the National Bank. They importuned Congress to create a new bank or preferably to re-charter the old one which they felt was capable of meeting all exigencies which might arise.

During the course of his address White was interrupted "and reminded of the rule permitting nothing more than a statement of the substance of the memorial." He thereupon moved for a suspension of the rule which was granted by more than a two-thirds majority. He concluded by saying: "Indeed, it is extremely difficult to conceive how the Government can get along at all without the aid of a national bank to carry on its financial operations—scarcely a greater puzzle to tell how to distribute justice without the help of courts of justice. It is as much the province of Government to regulate conduct—command what is right, prohibit what is wrong in one as well as in the other."[88]

In July, 1832, the *Tribune* and the *Emporium* announced their support of White as a candidate for Governor, although the *Bee* did not publish a formal announcement of his candidacy until July

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[85] *Register of Debates in Congress*, vol. X, pt. III, p. 4143; *Louisiana Advertiser*, June 9, 1834.
[86] *Cong. Globe*, 23 Cong., 1 Sess., p. 349.
[87] *Ibid.*, p. 351; *National Gazette*, May 1, 1834.
[88] Baton Rouge *Gazette*, June 28, 1834.

12.[89] The election was not to be held until the summer of 1834. This announcement, therefore, would seem rather premature, but White's chief opponent for gubernatorial honors, General John B. Dawson, had been an active candidate since the spring of 1831, before Governor Roman "was scarcely warm in his seat."[90]

The *Emporium* erroneously claimed Creole birth for White as just ground for political preferment. This statement was quickly challenged by the *Bee*, the leading opposition publication and the one which proved to be most vituperative in a bitterly fought campaign. "Mr. White," commented this paper, "is a highly respectable man—an honest one, which is the highest tribute that can be paid to any mortal,—but his career in Congress has not given evidence of any very 'brilliant' or rare endowments."[91] The *Bee* took exception to the denomination of White as "the people's candidate", pointing out that he was supported by only two papers, the *Tribune* and the *Emporium;* while Judge Dawson had the endorsement of the *Attakapas Gazette* at St. Martinville, the *Frontier Reporter* at Natchitoches, the *Phoenix* at St. Francisville, and by one, if not both, of the Clinton papers.[92] White's candidacy, however, was soon endorsed by a number of other papers, among which were the *Louisiana Advertiser*, the *Mercantile Advertiser*, and the Thibodeauxville *Intelligencer*. The supporters of Dawson, who was the nominee of the Jacksonian faction, maintained that the Clay-Adams group had had difficulty in determining upon a suitable candidate, and had finally nominated White because of his great popularity in South Louisiana. This popularity, it was claimed, was waning and the diminution in the number of votes cast for White's election to Congress in 1832 as compared with the number cast for his election in 1830 was cited as evidence of the correctness of this opinion.[93]

The Opelousas *Gazette* endorsed White's candidacy in a very eulogistic article, declaring that few persons possessed in so eminent a degree the peculiar and high qualifications required of the chief magistrate of an independent State. "To independence, firmness and decision of character, Mr. White unites sound judgment, impartiality, and talents of a high order." Allusion was made to his plain, bland, and affable manners; qualities which

[89] New Orleans *Bee*, July 7, 12, 1832.
[90] Baton Rouge *Gazette*, June 7, 1834.
[91] New Orleans *Bee*, July 7, 1832.
[92] *Ibid.*, July 10, 1832.
[93] *Ibid.*, July 28, 1832.

would make him acceptable as the republican governor of a republican State. "His political principles," it concluded, "are sound, and embrace the leading policy and measures which Louisiana has sanctioned, both in the administration of the State and General Governments. Our State administration cannot be committed to safer hands, nor do we believe, to one, who is more justly the people's favorite."[94]

Early in the campaign an attempt was made to disaffect a large portion of General Dawson's following in the Felicianas by reviving an old feud between the general and Judge Thomas Wither Chinn. It seems that while a member of the legislature Dawson had sought to impeach Chinn, then a district judge, presumably with the idea of securing the office for himself. A reconciliation had subsequently been effected between the two men, and this attempt at alienation proved abortive.[95] It does not appear that White had any part in the scheme, for none of the opposition papers made any effort to implicate him in the unsavory affair. It was charged by Jackson supporters during the fall of 1832 that the Clay men were utilizing White's popularity with the electorate in an attempt to attract votes to Henry Clay. Voters were told, they said, that a vote for Clay would be a vote for White. They decried this using up of White's popularity prematurely,[96] evidently thinking that his popularity was of limited quantity.

Political discussions subsided somewhat as the year 1832 drew to a close, although in November a movement was initiated to bring out Denis Prieur, Mayor of New Orleans, as a third candidate. The *Bee* saw in this an attempt on the part of the opponents of Dawson to split the general's following, Prieur also being a Jackson supporter, and thus to insure the election of White.[97] There was also a rumor that White contemplated withdrawing from the gubernatorial race;[98] but this report seems to have been entirely without basis; as a matter of fact, White had done very little campaigning since his nomination. He returned to Washington in December to resume his seat in the lower House of Congress.

Upon the adjournment of Congress in March, 1833, White returned to New Orleans by way of Cincinnati;[99] and shortly thereafter began a tour of the State for the purpose of promoting his

[94] Opelousas *Gazette*, quoted in Baton Rouge *Gazette*, September 1, 1832.
[95] *Phoenix*, quoted in New Orleans *Bee*, September 15, 1832.
[96] New Orleans *Bee*, October 11, 1832.
[97] *Ibid.*, November 27, 1832.
[98] *Ibid.*, December 1, 1832.
[99] *Ibid.*, April 4, 1833.

candidacy. While on this tour he met with an accident which was at first thought to be fatal. The steamboat, *Lioness*, aboard which he was traveling, was totally wrecked by an explosion which occurred on the Red River about six o'clock in the morning of May 19th at a point some forty miles above the town of Alexandria. The explosion was caused by the ignition of a gun-powder magazine by a fire in the hold of the vessel, the original source of which was never determined. Many of the passengers and crew were lost, and most of those who escaped with their lives were rescued, while struggling in the current of the river, by the local inhabitants who had hurried to the scene of disaster.[100] For a time all hope of White's recovery was despaired of, and reports of his death were printed in some of the newspapers.[101] Although his recovery was not rapid, it was steady, and he was able to complete his tour of the remote parts of the State before returning to Washington for the re-convening of Congress in December.

In spite of the vigorous prosecution of his campaign, there were persistent rumors during the late summer and autumn of 1833 that White would withdraw his candidacy in favor of Denis Prieur who had been brought out as a third candidate.[102] These reports, however, were vigorously repelled by White's supporters.[103]

During the summer of 1833 the Dawson press began to hurl a charge against White which continued to be iterated with tiresome repetition until the very close of the campaign. This was the accusation that White had betrayed his people and ruined the most flourishing industry of the State by voting for the Compromise Tariff, which provided for a gradual reduction of the sugar duty. The *Bee* characterized him as a political gamester, a traitor, one who was willing to sacrifice the interests of his constituents to pacify a small group which was ready to disrupt the Union for selfish purposes. He was, it asserted, more knave than fool, although this same paper later in the campaign emphatically denied ever having made such a statement.[104] J. B. Dawson's principles, it was claimed, were identical with those of Andrew Jackson, and had he been in Congress he would not have voted for the Compromise Tariff.[105] Such assertions were a bit inconsistent, since the Compromise Tariff, as the *Louisiana Advertiser* pointed out,

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[100] *Ibid.*, May 27, 1833.
[101] *Ibid.*, May 29, 1833; *Lafourche Advertiser*, quoted in Baton Rouge *Gazette*, August 3, 1833.
[102] New Orleans *Bee*, October 11, 1833.
[103] Thibodeauxville *Intelligencer*, quoted in New Orleans *Bee*, October 28, 1833.
[104] New Orleans *Bee*, July 26, 1833; *Louisiana Advertiser*, April 24, 1834.
[105] New Orleans *Bee*, August 5, 1833.

had the endorsement of the President. "Does the *Bee*," it asked, "and the supporters of J. B. Dawson, pretend that all those who were in favor of that measure, are equally criminal, and traitors? If so, what portion of the crime and the treason justly belongs to their idol, Andrew Jackson, who recommended and approved the measure, by which the local industry of those who so largely contributed to his glory, has been in a manner paralyzed."[106]

The campaign became more heated as the year 1834 was ushered in, with the election but six months in the future, and we find the *Bee* reverting to its charges against White for his vote in favor of the tariff. He was accused of being recreant to the interests of his constituents and of having united with political gamblers in offering up Louisiana as a sacrifice to propitiate the nullifiers. It was charged that his supporters abstained from commenting on this public act, the one most in need of explanation, and preferred to dwell upon deeds less culpable in character. An explanation on this point was demanded.[107]

In defense of White's position the *Louisiana Advertiser* said: "we have frequently, and we think triumphantly, defended Mr. White's vote on the tariff question. He on that occasion acted in concert with the friends of the protective system, and to save the whole, gave up a part. The resolution of the duty on sugar, in common with other protected articles, was a compromise that saved the principle which more than anything else, the friends of the American system contended for. [George Augustus] Waggaman who, as much as any man, was deeply interested in the sugar interests voted with Mr. Clay as Mr. White voted because he believed it to be for the interests of Louisiana.

"We do not think it necessary," the article continued, "to be constantly repeating the same thing either in favor of Mr. White or in answer to his detractors; who, besides, urge nothing against him worthy the notice of men of sense. It is not necessary to his success that his praises should be daily chanted."[108] The editor asserted that White's public acts were well known and did not need recounting, while Dawson's praises had to be continually dinned in the ears of the voters to keep them cognizant with the fact of his existence.

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[106] *Louisiana Advertiser*, January 1, 1834.
[107] New Orleans *Bee*, January 29, 1834.
[108] *Louisiana Advertiser*, April 9, 1834.

In spite of the explanations of White's position on the tariff question, the Dawson supporters continued to the day of the election to stigmatize him as a betrayer of the people's confidence. The *Bee* asserted that the effect of White's "ruinous vote" on the sugar duty was nowhere felt more keenly than in his own immediate neighborhood; and it stated further that he had taken proper precautions as to his own future economic welfare by converting his sugar establishment into a cotton plantation.[109]

As the campaign progressed each group accused the candidate of the opposing faction of being under the domination of another person. Dawson, it was charged, was controlled by Martin Gordon, a custom-house official, and subject to the domination of the "custom-house coterie"; and, if elected, it was asserted, he would be a mere vice-roy under the control of Andrew Jackson.[110] Dawson was also accused of being a nullifier.[111] On the other hand, White was denounced as being under the domination of Alexander Porter and a small political clan somewhere about the Bayou Lafourche, who, it was charged, anticipated ruling through the election of White,[112] who was a pliant tool in the hands of Porter.[113] White was supported by Porter,[114] a natural procedure, since they were affiliated with the same political group; but there is no evidence that the Senator attempted any dictation of White's policies.

Both sides sought to attract the Creole vote, especially after Prieur's withdrawal from the contest. The White supporters made much of the fact that Dawson was unable to speak the French language; while White was conversant with all the languages spoken by the heterogeneous population of the State.[115] The Dawson supporters asserted that White had a hearty contempt for the Creoles, whom, they declared, he referred to as "creowls".[116] The fact that Henry Johnson was selected as a nominee by the White faction to succeed their gubernatorial candidate in Congress was seized upon by the Dawson group as evidence that the Creoles had nothing to expect from White's election but proscription in office.[117] It was also charged that the White supporters were seeking to

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[109]New Orleans *Bee*, April 22, June 17, July 7, 1834.
[110]*Ibid.*, December 27, 1833; February 14, 1834; *Louisiana Advertiser*, January 29, March 8, and April 23, 1834.
[111]*Ibid.*, April 23, 1834.
[112]New Orleans *Bee*, December 27, 1833.
[113]*Ibid.*, June 5, 1834.
[114]*A. Porter to J. B. Harrison*, Washington, February 18, 1834, in Burton Harrison's Collection.
[115]*Louisiana Advertiser*, April 22, 1834.
[116]New Orleans *Bee*, May 15, 1834.
[117]*Ibid.*, April 9, 1834.

secure the Irish vote by pressing the claim that one of their fellow-countrymen, Alexander Porter, favored White's candidacy.[118] White's advocacy of a National Bank was urged against him as the representative of a moneyed and aristocratic class.[119]

White had made a speech in Congress some two or three years prior to his election as Governor which was an effective caricature of the claims of the anti-tariff advocates. This speech was seized upon by his opponents in the campaign and analyzed as though it represented his true views on the subject; and he was denounced at voting in opposition to his expressed sentiments on the pending measure. All who had heard or read the address at the time knew that its purpose was to ridicule the opponents of the tariff system, and that it had served this desired purpose very effectively. The Dawson men had removed the speech from its proper setting and placed a warped construction upon it by interpreting the views expressed therein as the true sentiments of the speaker.[120]

To the charge that White, while in Congress, had done nothing for the city of New Orleans or for the State his supporters replied by citing acts which he had sponsored for ameliorating the commercial stringency in the city and the numerous land title adjustments in the country.[121] Much was made of the fact that White remained at his post in Washington attending to the duties of his office, while Dawson, neglecting his duties as judge, was riding about the State soliciting votes. It was intimated that Dawson's popularity in the Florida Parishes was due to the fact that the citizens of this section wished to elect him Governor in order that someone might be appointed to his judicial position who would perform the functions of the office.[122] White was importuned to return to Louisiana and participate personally in the campaign, but he declined on the ground that his presence was needed in Washington since a number of measures affecting the interests of his State were pending in Congress and would probably be brought up for action before the adjournment of that body.[123] White resigned his congressional seat just prior to the gubernatorial election.[124]

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[118] *Ibid.*, June 7, 1834.
[119] *Ibid.*, July 7, 1834; *Courier*, May 15, 1834.
[120] *Louisiana Advertiser*, March 8, 1834; New Orleans *Bee*, January 28, 1834.
[121] *Louisiana Advertiser*, April 30, 1834.
[122] Thibodeauxville *Intelligencer*, quoted in Baton Rouge *Gazette*, June 7, 1834; *Louisiana Advertiser*, June 3, 1834.
[123] Baton Rouge *Gazette*, June 28, 1834.
[124] *National Gazette*, July 12, 1834; *Louisiana Advertiser*, June 25, 1834.

The election for Governor took place on July 7, 8, and 9.[125] The result was a decisive victory for White as demonstrated by the official returns announced by the Louisiana Senate and House of Representatives. The former declared White to have received 6423 votes and Dawson 4913; while the official returns of the latter gave White 6973 votes and Dawson 4149.[126] After the election the *Bee* complainingly remarked that "The [Louisiana] *Advertiser* boasts that the late election in this city was a great Whig triumph. How can that paper, in the teeth of repeated declarations, that party politics were not at issue in the contest, have the effrontery to do this? We would ask if Mr. C. M. Conrad, at a meeting of the 'friends of Mr. White,' did not reprobate and denounce any connection between local and general politics, and did not declare himself for one, as being friendly to the general administration and as indisposed to take any part against it. We have understood that he did, and challenge denial as to the fact, which is conclusive proof that if the Whigs have gained a triumph, it has been a surreptitious one, in which many of our friends have been unwittingly induced to take part."[127] It was true that resolutions were adopted at one of the White meetings endorsing the candidacy of persons who were pledged to no party;[128] but it was frequently stated in the press of both factions that White was opposed to Jackson's administration and that he was supported by the Clay-Adams faction. In reply to the charge of the *Bee* the *Louisiana Advertiser* remarked that "Mr. Conrad is one man, and we are not at all concerned about his opinions and declarations. He has a constitutional right to vote for Mr. White, and to assign his reasons for doing so. But Mr. Conrad in the declaration above attributed to him, no more represented the Whig Party, than the editor of the *Bee* now represents the Jackson party, in denying that General Dawson, who was nominated for the Governorship by a Jackson caucus, was a Jackson candidate. The truth is, and everybody knows it, that the election was a contest of opposite principles—and that its result is a proof of the disapprobation of the people of this State of the measures and doctrines of the administration of the General Government."[129]

The election was an unprecedented victory for the Whigs, White being elected by a greater majority than had ever been

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[125]New Orleans *Bee*, July 8, 1834.
[126]*Ibid.*, January 10, 1835.
[127]*Ibid.*, July 14, 1834.
[128]*Ibid.*, June 28, 1834.
[129]*Louisiana Advertiser*, July 16, 1834.

given a gubernatorial candidate in the history of the State.[130] There was a Whig majority in the legislature, and two of the three Representatives elected to Congress were Whigs.[131] The campaign had been a severe one, with great excitement on both sides; and it was said that bets were offered as though the contest were a cock fight, a horse race, or that still more popular sport, a New Orleans duel. White was conceded an advantage in that he had never been defeated before the people. An unfriendly paper admitted that "No other man could have been found in Louisiana who would carry such an influence with him. His popularity is unbounded, and his personal worth is undisputed."[132] The *Courier*, a Jackson organ, lamented that the defeat of the Jackson candidates had been total and complete, but admitted that the Whigs had not crowed much over their victory. This forbearance, it thought, was due to sympathy for their humiliating situation.[133]

When the legislature convened in January, 1835, it canvassed the returns and proceeded to ballot on the two candidates receiving the highest number of votes, as provided for in the constitution.[134] This election by the legislature was, however, a mere legal formality, since it had become the custom to elect that candidate whom the majority had favored in the popular election. This was shown by the fact that the Senate and House in joint session gave White 58 votes with three blanks.[135]

The inauguration took place on February 2. In his inaugural address the new Governor stated his intention of continuing the policies of the outgoing administration. During the course of his speech he explained his vote on the Compromise Tariff measure of 1833. He said that the period to which he alluded was one of "peculiar moment"—indeed, it was generally considered a crisis in our National affairs and the measure proposed by Henry Clay was the quickest and surest means of relieving it. The clause in the bill affecting the agricultural interests of Louisiana was both unjust and injurious; but it was a component part of the bill and had to stand or fall with it. After mutual consultation the Louisiana delegation in Congress had unanimously come to the conclusion that it would be better to support the measure with the injurious clause included rather than endanger the prospect of

[130] *National Gazette*, April 20, 1835.
[131] *Ibid.*, August 2, 1834.
[132] *Pennsylvanian*, quoted in New Orleans *Bee*, August 6, 1834.
[133] *Courier*, quoted in *National Gazette*, August 2, 1834.
[134] Francis Newton Thorpe, *American Charters, Constitutions and Organic Laws, 1492-1908*, (Washington, 1909), vol. III, p. 1384.
[135] New Orleans *Bee*, January 10, 1835.

an amicable settlement. He believed, he said, that the agricultural interests of the State could never develop upon a sound basis so long as their very existence depended upon a precarious vote in Congress.

Governor White referred to the necessity of an adjustment of the claims arising from the grants of land to the Baron de Bastrop and the Marquis de Maison Rouge. The magnitude of these grants, comprising several hundred thousand acres, caused these claims to be regarded with suspicion. He said that during the last session of Congress a bill had passed the Senate referring these claims to the ordinary courts of law, but that the measure had been allowed to expire in the House for lack of interest in the matter. He said that as long as these titles remained unadjusted, they offered an impediment to the proper settlement and development of this portion of the State; and he suggested the propriety of the adoption of resolutions by the legislature expressive of the general assembly's views in the matter, which, coupled with the claims of private individuals, would perhaps be effective in producing Congressional action. The Governor referred to laws passed by Congress setting aside certain portions of the public domain to be used by the State for purposes of education. In the case of the State of Louisiana most of these tracts had never been located because of the failure to complete the survey of the vacant lands. He proposed that the legislature authorize the appointment of an agent whose duty should be to locate suitable tracts, and suggested that his compensation be a percentage of the sums derived from the sales of such lands. He would thus be interested in selecting the best available lands.

The Governor remarked upon the deficiency in training and discipline which prevailed generally within the militia of the various States. He believed, however, that this mode of defense furnished the safest reliance of free governments against external aggression and internal violence. He spoke approvingly in this connection of such local, patriotic organizations as the Louisiana Legion in New Orleans, and recommended that the legislature encourage the establishment of similar organizations throughout the State.

After discussing the improvements in drainage, sanitation, and general living conditions in the city of New Orleans and the possibilities for the future development of this port, he concluded

as follows: "In short, Fellow Citizens,—to maintain the supremacy of the laws; to insure a faithful performance by public functionaries of their official duty; to secure to all, as far as may depend on my exertions, the full and free enjoyment of their rights; those I concede to be among the first objects of the mandates which I have received from the people; and in the prosecution of which, I count with assurance on the efficient support and cooperation of the General Assembly."[136]

The *Louisiana Advertiser* thought that the inaugural ceremonies were very impressive, and predicted a beneficent government for the State under the administration of Governor White. The new Governor, it said, would adequately protect the principles of the Constitution and would promote the policy of internal improvements. His retirement at the conclusion of his term would be accompanied by the regrets and gratitude of the people of Louisiana.[137]

The legislature had been in session approximately one month when White was inaugurated; and, as a consequence, many of the important measures passed by this body came up for executive consideration after the installation of the new Governor. One of the important acts of this session was a bill, passed by the legislature on March 3, providing for the drainage of the tract of land between the city of New Orleans and Lake Pontchartrain. The act was generally considered beneficial, both as a sanitary measure and as a means of promoting the general prosperity of the city and State.[138] The bill was signed by the Governor on March 19 and thus became a law.[139] The legislature also passed a revenue measure providing for the raising of funds for the maintenance of charitable institutions and schools in the city of New Orleans. The first part of the act levied a tax on all steamboat and ship passengers arriving at the port of New Orleans from beyond the limits of the State. A levy of one dollar for each cabin passenger and of fifty cents for each deck or steerage passenger was to be imposed. The tax was to be assessed against the owners of the vessels, and provision was made for the appointment of two officials for its collection. The second part of the measure provided for the imposition of an occupational tax upon the proprietors of grog shops, taverns, billiard tables, coffee houses, and upon negro traders. The third

[136] *Ibid.*, February 3, 1835; Baton Rouge *Gazette*, February 14, 1835.
[137] *Louisiana Advertiser*, February 4, 1834.
[138] *Ibid.*, March 4, 1835.
[139] New Orleans *Bee*, April 11, 1835.

portion of the bill levied an annual tax of one thousand dollars on all agents in New Orleans representing foreign insurance companies; and also revised the law of succession so that all persons in foreign countries inheriting real estate in Louisiana should pay a tax of ten per cent.[140]

The *Bee* condemned the first portion of this act as violative of the Federal Constitution and as discriminatory. It argued that if a tax on passengers were imposed, it should be levied on all passengers arriving in New Orleans without regard to their mode of travel, and not solely on those arriving by ship or steamboat. It scorned the policy of compelling travelers to support the schools and charitable institutions of New Orleans.[141]

On April 2 the Governor vetoed that portion of the proposed measure levying a tax on passengers, both on constitutional grounds and on the score of policy. He said that the Federal Constitution guaranteed to the citizens of each State the immunities and privileges of citizens of the several States. This guaranty, he contended, was violated by the act. He further pointed out that the Federal Government had sole authority to regulate interstate and foreign commerce, and that this measure was, in effect, an attempt at such regulation, since the term commerce as used in the Constitution comprehended intercourse and navigation. He said that the act was scarcely less objectionable on the score of policy, stating that it was from persons arriving in New Orleans for purposes of commerce that the city largely derived its growing wealth and prosperity. To impose a burden on such persons would be to hamper the city's future development. Then, too, he argued that such discrimination against citizens of other States might lead to retaliatory acts on the part of other commonwealths.[142] The legislature then reconsidered and passed the measure, omitting the objectionable provisions.[143] Even the Governor's political enemies were compelled to approve the course of action adopted by him in vetoing portions of the revenue measure.[144]

The legislature, acting upon the suggestion of White in his inaugural address relative to determining the location of certain lands allotted by the Federal Government to the State for the purpose of education, by joint resolution requested the Governor

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[140] *National Gazette*, April 16, 1835.
[141] New Orleans *Bee*, April 2, 1835.
[142] *Ibid.*, April 6, 1835.
[143] *Ibid.*, April 3, 1835.
[144] *Ibid.*, April 4, 1835.

to apply to the Secretary of the Treasury of the United States to procure the location of the two townships from the Federal Government; and should the Governor be authorized by the Secretary to have the location of the land determined, he was empowered to appoint one, or two persons, as he might deem proper, for the purpose of locating the allotted lands. The compensation of the agent or agents should be either two and one-half per cent of the receipts from the sales of such lands or a fixed sum, to be determined by the legislature, at their option.[145] The resolution, of course, received the endorsement of the Governor. White also approved resolutions of the legislature requesting the Louisiana delegation in Congress to obtain from the Federal Government funds to construct levees along the Mississippi River enclosing public lands, and to build a highway across the Federal lands in Plaquemines Parish.[146] Resolutions instructing the board of internal improvements to investigate the upper course of Bayou Teche with a view to rendering it navigable, and to report its findings to the next legislature were also endorsed by the Governor.[147] He also approved a measure reorganizing the State militia.[148] An act authorizing the State Treasurer to subscribe five hundred shares on the part of the State to the capital stock of the Barataria and Lafourche Canal Company likewise met with the Governor's approval.[149] White signed a number of bills chartering banks, incorporating insurance companies and religious organizations, and numerous other acts of a purely local character.[150]

Governor White soon encountered adverse criticism, especially among his political followers, because of his policy with reference to appointments. The *Louisiana Advertiser*, the publication which had been most outstanding in its support of his candidacy for Governor, declared that it had no objections to the appointment of Creoles to public positions, who, by virtue of their birth, had a natural as well as a legal right to hold office; their attachment to our country and its republican institutions, it asserted, was undoubted. It confessed, however, that this view did not extend to the foreign French who neither knew nor cared particularly for American institutions. Among this group were included those who had been naturalized, who, it was admitted, were legally entitled

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[145] *Ibid.*, May 15, 1835.
[146] *Ibid.*, April 13, 21, 1835.
[147] *Ibid.*, March 28, 1835.
[148] *Ibid.*, April 13, 1835.
[149] *Ibid.*, May 11, 1835.
[150] *Ibid.*, Mach 27, 28, 31, 1835; April 2, 3, 4, 6, 7, 8, 11, 15, 16, 17, 20, 21, 29, 1835.

to official positions, but it was immodest in them to seek political preferment. This publication concluded that "it is unfair, unjust, and highly imprudent in the appointing power, to confer office upon them, except with extreme reserve and caution, and after they have been tried, and their sentiments in relation to our institutions, and their devotion to this country over all others is well ascertained."[151] The same paper in a later issue disclaimed any prejudices against naturalized citizens as such, holding as absurd the contention that one's fitness for public trust should be dependent upon his place of nativity. Its objections were confined to the appointment of persons whose education and training under despotic and monarchical forms of government rendered them incapable of appreciating our American institutions. Many of these persons, it was asserted, were unable to read or speak the language in which the Constitution was written, and yet they had been appointed to administer laws of the government provided for by this Constitution. "It is against the appointment of such men to public offices," concluded this publication, "that we have raised our voice—men who are foreigners by birth—foreigners by education —foreigners by language—foreigners by the company they keep—foreigners by their habits, manners, feelings, and opinions."[152]

In the midst of the outcry an ironical letter was published, apprising the Governor of the fact that a coldness had lately developed between the King of France and his son, the Duke of Orleans, and that the young man contemplated leaving his native land pending a reconciliation. He would probably select New Orleans as his temporary abode, and it was suggested that the Governor refrain from filling the vacancy then existing in the office of coroner for Orleans Parish until the duke's arrival, when he might be tendered this position which would enable him to become familiar with American laws and customs and would, at the same time, afford him an opportunity of acquiring a little wealth.[153]

So strong was the excitement among the dissatisfied elements because of the Governor's conduct in the matter of appointments that a public meeting was called for April 4 to consider the subject.[154] Resolutions of censure were introduced in the lower branch of the legislature, but were rejected by a vote of 18 to 12.[155] The

[151] *Louisiana Advertiser*, March 23, 1835.
[152] *Ibid.*, March 31, 1835.
[153] *Ibid.*, March 27, 1835.
[154] *National Gazette*, April 20, 1835.
[155] *Louisiana Advertiser*, quoted in *National Gazette*, April 20, 1835.

Bee condemned the resolutions as an attempt on the part of the House of Representatives to arrogate to itself authority to which it was not constitutionally entitled. It was pointed out that the appoinments had all been confirmed by the Senate, and had they been unwise this body could have rejected them.[156] As a matter of fact, a check on White's appointments prior to April 6 showed that during the first two months of his incumbency the Governor had appointed ninety persons to office, and of these not more than eight or ten were naturalized citizens.[157] Considering the relatively large number of foreign born persons in the population of the State at this time, the proportion of appointments allotted to that element was probably not excessive. The *Bee*, which had been most bitter in its denunciation of White prior to his election, now became his warmest defender. That paper declared "The public welfare shall ever be our guide; and although Governor White has not been elected by the party with whom we are more immediately connected, such parts of his executive career as merit approbation will cheerfully be vindicated." He was now, it continued, to act for the whole people, and needy or importunate persons of native birth should not be given preference over those better qualified on the ground that the latter happened to be born in another land.[158] The furor gradually subsided but did not entirely die out, for during the late summer there were violent mob demonstrations in opposition to naturalized citizens holding official positions of preferment. The Louisiana Legion was called out to preserve peace and order in New Orleans; while the merchants and business men of the city instituted a boycott against the *Louisiana Advertiser* for its publication of what they considered to be incendiary editorials, calculated to arouse hostile sentiments against certain classes of the population and to promote mob violence.[159] Federal troops were stationed in New Orleans and held in readiness should the executive authorities deem it necessary to call upon them to aid in the maintenance of order. Additional units of militia were formed, including the organization of a company of Germans.[160]

Enlistments in the Texan army, then engaged in the prosecution of a war against the Mexican Government, became so numerous among the inhabitants of Louisiana, and recruiting activities became so conspicuous in New Orleans that Governor White

[156] New Orleans *Bee*, April 3, 1835.
[157] *Ibid.*, April 6, 1835.
[158] *Ibid.*, April 4, 1835.
[159] *National Gazette*, September 22, 1835.
[160] New Orleans *Bee*, quoted in *National Gazette*, September 24, 1835.

deemed it expedient to take official cognizance of the situation. Accordingly on November 13, 1835, he issued a proclamation against enlistments. After reminding the citizens of Louisiana that the Mexican Government was at peace with the United States, he cited a Federal law, passed by Congress in 1818, prohibiting the enlistment, within the territorial limits or jurisdiction of the United States, of an American citizen in the army of a foreign power for the purpose of taking up arms against a nation with which our government was on friendly terms. Anyone violating the provisions of this act was to be subject to a fine of one thousand dollars or three years imprisonment. He then called upon the magistrates and all good citizens of the State to aid in upholding the law.[161] The proclamation, however, seems to have been ineffective in preventing enlistments, for there were frequent notices in the newspapers of expeditions leaving New Orleans destined for Texas or Mexico; and it was stated near the close of the year that the Texas revolution was being financed largely with New Orleans capital and that fresh recruits were being drawn chiefly from that city. It was estimated before the end of the year that more than six hundred persons had passed through New Orleans on their way to join the Texan army.[162]

On December 30, 1835, an editorial appeared in one of the New Orleans papers depicting abuses prevalent in various departments of the State government. The article purported to anticipate the Governor's message to the legislature, and its language was couched in the phraseology of an executive communication to the general assembly. The funds at the disposal of the treasury department had been inadequate to satisfy the wants of the State, due to the extravagance of the preceding session of the legislature. Except in the city of New Orleans the condition of the militia afforded no opportunity for boastful indulgence, and its reorganization in the interest of increased efficiency was suggested. The palpable inefficiency of the judicial system prevented the speedy administration of the laws, or even the opportunity of securing justice to suitors and criminals. A grant of authority to the Governor by the legislature to appoint five judges to the supreme court in accordance with the constitutional provision was recommended. The creation of a probate and orphans court for the city of New Orleans was suggested, since the parish court in that city

[161] New Orleans *Bee*, November 23, 1835.
[162] *Ibid.*, December 19, 1835.

was unable to relieve the congestion of its docket. The accumulation of cases was such that several years elapsed before an action brought in this court could be tried; and even then judgment was deferred two or three years because the "learned judge" could not find sufficient leisure or inclination to render a decision. It was proposed that the judicial system be simplified by allowing the district judges to sit with parish judges for the purpose of hearing appeals from the lower tribunals.[163]

Governor White's annual message was transmitted to the legislature on January 4, 1836. The Governor observed that probably not since the time when our shores were beset by an invading horde had circumstances confronted the people's representatives more exacting of prudence and wisdom than those attendant upon the present session. He said that in the full career of peace and prosperity a feverish excitement had pervaded the people, and a disposition had manifested itself to substitute tumult and violence for the orderly processes of the law. This was probably an allusion to the instances of mob activity which had occurred in New Orleans during the preceding summer. Governor White next referred to the outbreak of hostilities between the people of Texas and the Mexican Government. He said that the proximity of Louisiana to the scene of action aroused unusual interest on the part of the inhabitants of that State. He had therefore deemed it his duty to issue a proclamation reminding the people of the prohibitive enactments of the National Government relative to the maintenance of strict neutrality. He also referred to the strained relations then existing between France and the United States. He endorsed the course adopted by President Andrew Jackson and said that satisfactory explanations had been made to France.

A considerable portion of Governor White's message was devoted to a discussion of the activities of the abolition societies in some of the Northern States. He condemned their publications—a collection of which he transmitted to the legislature—as incendiary and calculated to stir up strife and bloodshed in the midst of a peaceful, happy, and well regulated society. He said he could make no specific recommendations to the legislature in the matter of enactments, but that he would recommend a revision of existing statutes on this subject. The question being agitated, he said, was a domestic one and each State had the sole power of dealing with it as it saw best. He thought that it was the function of the

[163] *Ibid.*, December 30, 1835.

Federal Government, whose duty it was to protect the rights of each State and to promote harmonious relations among the various members of the confederacy, to regulate the activities of these zealots. He therefore approved the President's recommendation to Congress for the enactment of legislation to prevent the use of the United States mails as a means of disseminating the literature of these societies. He advocated Federal action of a more extended character than that proposed. He believed that the abolitionists constituted a very small minority of the population in the Northern States, but they compensated their deficiency in numerical strength by the aggressiveness of their tactics. He hoped that the law-abiding majorities in the States of the North would curb the activities of these minority groups either by means of legislative sanctions or through the pressure of public opinion. He said that when a set of men, banded together for the purpose of plotting treason and conspiring to disorganize society, were allowed to plead freedom of the press and of discussion in defense of their action, then the weapons intended for the protection of liberty had been converted into agencies for her own destruction.

As in his inaugural address, the Governor again urged a better organization and disciplining of the militia, calling attention to the bloody war then being waged near the border of the State and its possible implications. He remarked that the Constitution authorized Congress to organize the militia, delegating to the States the appointment of officers and the training of the men; but Congressional provision in this respect had been so inadequate that the States were forced to assume the greater part of the burden. He urged that inducements of a remunerative character be offered to attract young men of capacity into the militia and warmly praised the work of voluntary associations of a military nature.

The Governor stated that the report of the Treasurer showed a balance in the treasury of $59,704.53. He commented upon the labors of the board of public works and believed that it had accomplished about as much as could have been expected under the circumstances. He was pleased to report that progress had been made in the construction of the New Orleans and Nashville Railroad, and that a canal had been completed permitting boats of moderate draft to enter the basin from the lake. He commended the advancement shown by the new medical school which had been established by the preceding legislature, saying that particular attention was being given to diseases peculiar to this section.

Governor White referred to the discrimination on the part of the Federal Government between the original States and those later admitted, with regard to their public lands, raising the question of the validity of the policy in the case of the newcomers since the principles of the confederacy contemplated equality among the States in all respects. Louisiana, like the other new States, had been admitted to membership in the Union on condition that she renounce all claim to the public lands within her limits. She had complied with the condition willingly, however, believing the interests of the two governments to be similar and that their relations in this matter would be harmonious; but the policy of the Federal Government during the past twenty years had not served to strengthen this belief. Whether by accident or design, he said, the policy pursued toward Louisiana had been one of exclusion. The laws of Congress in relation to the Territory of Orleans and Louisiana proper had been less liberal in their dispositions of public lands than in the cases of other territories and States. In addition, the bureaus at the seat of government, charged with the administration of the public lands in the State, had exhibited in their rules and regulations a lack of knowledge of the situation; and in many instances had defeated the useful purpose of the laws referred to them for execution. Other States had received grants embracing hundreds of thousands of acres for roads, canals, and purposes of education; while Louisiana, with the exception of a grant of two townships, had received nothing. Even in this solitary instance the intention of the act of Congress had been defeated by the discretionary authority of the officials connected with its administration.

The Governor then went into the history of the two townships which had been allotted to the State by the act of Congress of 1827 for the purpose of establishing a seminary of learning. Shortly after the authorization of the allotment the Secretary of the Treasury had written to the Governor, suggesting that suitable selections be made. The Governor had acted promptly and had sent in to the Federal Government a number of selections for the locations of tracts amounting in area to two townships. They had been rejected on the ground that surveys had not yet been completed. This was the situation when White was requested by resolutions of the legislature at its preceding session to procure authority from the Secretary of the Treasury to locate the tracts. Authority was immediately granted, and Governor White on April 25 selected several tracts from the public lands along Red River. These se-

lections were forwarded to Washington where they were promptly entered in the land office. Thereupon the Governor proceeded to locate tracts in the region north of Red River, and on July 3 again forwarded to Washington notices of the location of the lands selected. This time his selections were denied entry by the commissioner of the land office because the region in which they were located had not yet been offered for sale and was, therefore, not open to entry except for pre-emptionists under an act of 1834. In other words, the Governor said, the State was not entitled to select its allotted lands until speculators had had an opportunity of buying up all the land which had any value. He contended that the circumstances connected with the two cases were identical; and if an entry were illegal in the one instance, it was also invalid in the other. He asserted that no one possessed of ordinary understanding could doubt the propriety and legality of the entries, and he now submitted the case to the legislature for its consideration. He suggested that the State's representatives in Congress be requested to seek the passage of a new law permitting the State to make its entries according to the ordinary procedure.[164]

The *Bee* attributed the difficulties encountered by Governor White in securing the location of the allotted lands to the dilatory methods of his predecessors, who, it asserted, had in more than one instance been false to the trust reposed in them by the people of the State. The same paper took exception to the Governor's contention that the equality of the States guaranteed by the Constitution implied the right to ownership of all vacant lands within the limits of the States. This equality, it was contended, merely embraced similar political rights and State sovereignty, and did not extend to any type of property. It was pointed out that the Federal Government, having purchased the territory of Louisiana, was justly entitled to all the unoccupied lands. The local government had never had any claim or title to them.[165]

During its 1836 session the legislature was called upon to choose a United States Senator to fill the vacancy occasioned by the resignation of Charles Gayarré. Its choice fell upon a Democrat, Robert Carter Nicholas. All the candidates for the position were said to have been affiliated with the Democratic party.[166] The selection is interesting in view of the fact that the legislature, whose members had been chosen at the time of White's election to

[164] *Ibid.*, January 5, 1836.
[165] *Ibid.*, January 6, 1836.
[166] New Orleans *Bee*, quoted in *National Gazette*, January 28, 1836.

the Governorship, contained a Whig majority. It was said, however, that had ex-Governor A. B. Roman, a Whig, consented to have his name placed in nomination as a candidate for the position, he would assuredly have been elected.[167]

Economic conditions throughout the State appear to have been very favorable during the second year of White's term as Governor. Marked progress was made in the improvements in and about New Orleans which added to the prosperity and general well-being of that city.[168] A balance of more than $150,000 in the State treasury was cited as evidence of the prevalence of favorable economic conditions.[169] As the year advanced, the absence of yellow fever, whose recurrent outbreaks were a serious deterrent to the State's development, was remarked upon, and the health of the people generally was pronounced unusually good. Real estate values in New Orleans had increased appreciably and that city was flourishing; while the prospects for the sugar and cotton crops were excellent.[170] The banking capital of Louisiana at this time was estimated to be about sixty millions with a paid-in capital of approximately forty-two millions. This amount was not then considered excessive since the annual trade of New Orleans was some seventy millions of dollars.[171]

The Texan revolution continued to furnish excitement for the people of Louisiana during the year 1836. General Edmund P. Gaines, in command of Federal troops stationed on the western border of the State, was given orders to maintain strict neutrality and to prevent the passage of armed immigrants into Texas.[172] Senator Porter expressed concern for the situation on the Louisiana border. He said that defeated Texan troops were seeking refuge within the limits of the State, and that their enemies, flushed with victory, were hot in their pursuit, although he did not believe that the Mexicans would violate our territory.[173] General Gaines, however, in a communication to his superior at Washington, expressed fears concerning the outbreak of hostilities along the border, and issued a circular letter to the Governors of Louisiana and Mississippi enjoining upon them the maintenance of strict neutrality. But his views were not shared by Governor White who

[167] *National Gazette*, January 16, 1836.
[168] *Ibid.*, January 19, 1836.
[169] *Ibid.*, April 19, 1836.
[170] *Ibid.*, August 11, 1836.
[171] *Ibid.*, November 26, 1836.
[172] *Ibid.*, April 30, 1836.
[173] *Ibid.*, May 10, 1836.

entertained no apprehensions relative to the border situation.[174] A movement of General Gaines into Texas during the summer created some excitement because of uncertainty as to the motive involved; but it later developed that the expedition was merely a punitive measure taken in conjunction with Texan troops against certain tribes of hostile Indians.[175] Late in July Governor White, in conformity with a requisition from the general, issued a proclamation for ten companies of mounted volunteers to reinforce the troops on the border.[176]

Governor White's message to the legislature, upon the convocation of that body in January, 1837, was replete with optimistic observations. He believed that never before had a general assembly been convened under such favorable circumstances. He found abundant reasons for felicitation. The people, he said, had participated amply in the bounties of nature; and, with the exception of a few instances in which attempts were made to substitute reckless passion for the regular processes of law, there had been no striking revulsions, either physical or moral, to disturb the order of society. This last remark was an allusion to certain mob activities which had occurred during the preceding summer.[177] The Governor believed that the public institutions were, on the whole, adequately performing the functions for which they were created. The case of the board of public works, however, was referred to the legislature for its careful consideration. The Governor pointed out that this body was wholly sustained by legislative grants and that its current expenses constituted a considerable drain upon the public treasury. The board had doubtlessly rendered many valuable services; but there seems to have been some doubt in the Governor's mind whether the recent results of its labors had been commensurate with the cost involved. The Governor admitted that no funds could be drawn by the board of public works without his authorization; but, in the performance of his multifarious duties as Chief Executive, he said that it was impossible for him to give adequate attention to the requirements of the board. He therefore recommended that some other mode of disbursement be devised. He suggested the appointment of a controller who should be empowered to examine, approve, and countersign the board's expense accounts.

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[174] *Ibid.*, May 12, 1836.
[175] *Ibid.*, August 2, 1836.
[176] *Ibid.*, July 30, 1836.
[177] *Ibid.*, September 22, 1836.

The Governor announced that he had received a sum of $44,000 from the Secretary of the Treasury of the United States in accordance with an act of Congress allotting to the State of Louisiana a return of 5 per cent on the proceeds from the sales of public lands within her limits, to be used for building levees along the Mississippi River and for the construction of public highways. He also remarked upon the progress made in the construction of the New Orleans and Nashville Railroad. Although the State had furnished no financial assistance in this undertaking, the Governor endorsed a policy of State aid by citing examples in which other States had fostered similar projects and noting the material benefits derived from such improvements.

Governor White then stated that the General Government, in accordance with an act of Congress, had offered to deposit certain funds in the State treasury. He considered this a wise move on the part of the Federal Government and urged acceptance of the funds by the legislature. He observed that while the deposit of this money with the State treasurer was merely in the nature of a loan, in his opinion it would be a long time before a contingency would arise which would necessitate its recall. In the meantime, he suggested that the legislature invest these funds in works of improvement throughout the State; for he believed it to be the intention of the Central Government that they should be used and not be permitted to remain idle in the State treasuries.

The Governor next commended the corps of Louisiana volunteers for its exploits of valor in the Seminole war. Then, after making specific recommendations to the legislature with regard to further works of improvement and methods for attaining greater efficiency, he called the attention of that body to an incident which had occurred since the adjournment last session. He alluded to a request made in the month of April by General Gaines, at that time stationed on the western border of Louisiana, to the State Executive for a brigade of volunteers to aid in repelling expected incursions of Indians. While in sympathy with the motives which had prompted the general to make this request, the Governor felt that he was without authority to comply with it since he had received no instructions relative to this matter from the President. It was with gratification that he afterwards learned of the President's approval of his course of action. During the month of July the Governor received another requisition from General Gaines for ten companies of mounted volunteers. In this instance he was

without discretionary power since he was in possession of instructions from the President through the War Department authorizing the general to call into the service of the United States such portions of the State's militia as he might deem necessary for the adequate protection of the western frontier. Before the order could be put into effect, however, its necessity had been superseded by the President's recall of Federal troops from several of the southwestern States.

The Governor submitted to the legislature sets of resolutions from several States condemning the activities of abolitionist societies. He said that there seemed to be unanimity of opinion among the various State authorities transmitting these resolutions concerning the sole right of each State to deal exclusively with its local institutions and that any external attempt at coercion was an unwarranted intermeddling. Such expressions were very gratifying, but they did not constitute the effective measures for which it had been hoped. While several States had asserted their right to enact penal laws for the suppression of such societies, apparently governed by their reverence for liberty of speech and of the press, they had deemed the passage of such legislation inexpedient. Under the circumstances the Governor recommended a careful revision of the existing statutes on the subject with a view to giving them all requisite efficiency, and concluded with this significant passage: "Beyond the measures of legal precaution, for the present, whatever alternatives the progress of events may offer, will form a proper subject of reflection, when the necessity for the consideration shall present itself. In the meantime, we should not deceive ourselves as to the possibility of a crisis. The agitators, emboldened by impunity, boast of increasing consequence and numbers. It at least behooves those most immediately concerned in the issue, to be prepared for any emergency, leaving the authors of consequences to account as they may to their country, for its violated constitution, and to humanity for the wounds inflicted upon it by their guilty licentiousness."[178]

The choice of a United States Senator again devolved upon the legislature. Alexander Mouton, a Democrat, was chosen to succeed the retiring Whig Senator, Alexander Porter. It appears that Mouton's most formidable opponent was another Democrat,

[178]New Orleans *Bee*, January 4, 1837.

John Slidell. Governor Roman was nominated as a candidate in spite of assurances given by one of his personal friends that he would positively decline the office should he be elected.[179]

The prosperity depicted by Governor White in his communication to the legislature was soon supplanted by financial panic and depression. By the close of March the financial stringency in New Orleans was beginning to become acute. Three financial establishments had gone by the board, one for seven millions of dollars. It was reported to have been the largest failure in the United States.[180] Merchants in other parts of the country were warned to be especially cautious in accepting notes on Louisiana and Mississippi banks. Southern notes in general were said to be at a discount of from 5 to 25 per cent, with the majority ranging between 10 and 20 per cent.[181] In commenting on the general situation in mid-April the New Orleans *True American* said: "Things are in a moody stillness. The disease is working its way into the vitals of the body politic with an awful rapidity. Its progress is silent, but certain. Nothing under heaven can avert the calamity from breaking up the fountains of credit in toto." The same paper declared that the levees appeared deserted, and that the quiet of mid-summer had replaced the activity of April.[182]

Diagnoses as to the causes of the prostration were not lacking. Overweaning confidence, it was asserted, had fostered the growth of credit structures on an insecure basis. Commission factors were accused of having inflated commodity prices from 30 to 50 per cent above their true value. These men had secured a monopoly of the banking facilities and through their monopolistic control had reared a gigantic credit structure which had ultimately collapsed of its own weight. In the reaction to inflation, prices of commodities had fallen as far below their true value as they had formerly been forced above it. Planters, it was said, had been induced to enter into agreements entirely at variance with sound judgment, and they were now confronted with the unpleasant prospect of having to work for years to repay grasping factors.[183] As is usually the case during periods of unsettled conditions, numerous panaceas were advocated; and dissertations on credit, commerce, and banking were frequently heard on street corners.[184] By the

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[179] *National Gazette*, January 24, 1837.
[180] *Arkansas State Gazette*, March 28, 1837.
[181] Cincinnati *Whig*, quoted in *National Gazette*, May 2, 1837.
[182] New Orleans *True American*, quoted in *National Gazette*, May 2, 1837.
[183] New Orleans *True American*, quoted in *Arkansas State Gazette*, May 2, 1837.
[184] New Orleans *Commercial Herald*, quoted in *Arkansas State Gazette*, May 16, 1837.

middle of July, however, the financial stringency had slackened considerably, and several of the New Orleans banks had partially resumed specie payments, while resumption on the part of other financial institutions of that city was expected at an early date.[185]

Late in 1837 a newspaper controversy developed as to Governor White's political affiliation. One of the Whig papers alleged that he had shifted political ground and gone over to the Democrats; while another organ of the same party denied the allegation and stoutly defended the Governor. The *Bee* declared the report to be without foundation and asserted that the Democrats neither sought nor desired his admission into their ranks.[186]

Governor White called the legislature into special session on December 11, 1837. Speculation had been rife for some time prior to the convening of the general assembly as to what action would be taken by the people's representatives in regard to the banks.[187] The Governor's communication dealt almost entirely with the monetary situation. He characterized the attending circumstances as perhaps the most critical under which a representative assembly had ever been called upon to deliberate. The country, he said, had experienced a sudden change from a high state of prosperity to one of unprecedented embarrassment, with confidence and credit seriously impaired and with agricultural commodity prices and property in general greatly depreciated. Worst of all, he said, the community had been subjected to the most afflictive curse, that of a currency wholly unregulated and unsound. He conceived it his duty to present this state of affairs to the general assembly with the hope that remedial measures might be devised for the mitigation of the prevailing evils. The people, he said, were looking forward with great interest to the results of the labors of their representatives.

The Governor said that during the preceding summer he had been importuned in a manner which scarcely gave him the choice of an alternative to summon a special session of the general assembly for the purpose of enacting appropriate legislation. He had been deterred, however, by the conviction that the remedial power was not vested in the State legislature. He believed that the currency question was, above all others, national in its scope. The President had called Congress into extraordinary session, but,

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[185] *Louisiana Advertiser*, quoted in *National Gazette*, July 25, 1837.
[186] New Orleans *Bee*, December 2, 1837.
[187] *Daily Picayune*, November 9, 1837.

that body having adjourned without adopting a single remedial act, it now devolved upon the State authorities to devise measures compatible with their limited jurisdiction. In the consideration of remedial legislation attention naturally centered on the condition of the banking institutions of the State. The aggregate capital of these corporations being very large and their power of issuing notes being derived from State authority, the subject of banks and bank issues naturally identified itself with the question of the circulation medium.

The almost universal and simultaneous suspension of specie payments on the part of the banks caused their bills, no longer convertible into precious metal, to depreciate rapidly; and, in accordance with the operation of Gresham's law, the precious metals soon disappeared from circulation, becoming mere commodities to be purchased and sold in the market. In many places the notes of individuals or corporations, not sanctioned by law, constituted the sole medium of exchange for small, daily transactions, forming a very unsatisfactory and inadequate currency, in which circumstances of necessity compelled acquiescence. The Governor urged that if it were in the power of the legislature to redress the wrongs under which the body politic was suffering, then the legislators were called upon by every motive which the sense of duty or the love of country could supply to adopt measures which would bring about this happy consummation. Their jurisdiction, he said, was generally supposed to reside in the supreme control of a State over bodies which derived their very existence from the exercise of its creative will.

He pointed out that the charters of most of the banks contained expressed provisions for their forfeiture upon failure to redeem their notes in gold or silver within a stated period; and he thought that the same conditions of forfeiture might be applied to those institutions whose charters did not contain this expressed provision, since they were bodies created by law and the privileges extended to them in their charters of incorporation should lapse upon their failure to fulfil their obligations. The Governor said that there were two conflicting opinions as to the proper policy to be pursued with respect to the banks. One group advocated the application of rigorous penalties, while another favored granting a bill of immunity for past offenses with plenary indulgence for the future. A strict application of either policy, he felt, would be injurious. Too lenient a policy would encourage excessive note

issues which might result in temporary prosperity, but in the end would merely aggravate the evil and postpone ultimate recovery. On the other hand, he argued that banking facilities had become so essential to the credit system that severe restrictions might unduly hamper their proper development and thereby work a permanent injury to the community. To search out and eradicate abuses, he continued, to remedy defects and obviate the recurrence of their evils was what the people had a right to expect of their representatives. He advocated a strict scrutiny and thorough examination of the condition of the banks as a basis for any legislation on the subject. Should the condition and past conduct of the banks prove commendable, measures for their relief might be enacted, but this should not be done without the insertion of clauses for the proper guaranty of the public interests.

Governor White advocated greater publicity in banking operations, holding that occult measures in matters of public concern were not in accordance with public sentiment. He said that if the financial situation were affected by banking operations, then greater publicity would increase public confidence, prevent violent fluctuations in the circulating medium, and would thereby more adequately serve the interests of all. He urged the resumption of specie payments as the great end toward which all other steps should conduce. Experience had shown, he continued, that when the financial affairs of a people became deranged, it required the exertion of the utmost prudence and well-directed concerted action to bring them back to a condition of soundness and stability. He doubted that the independent action of the several States would be sufficiently harmonious to effect the desired end. He believed that the only solution lay in the hearty co-operation of the capitalists with the National Government operating through a central bank, but he expressed doubts as to the effectiveness of such co-operation, so serious had the situation become. He believed that to compel the local banks to resume specie payments while the institutions of other States were still operating on a paper basis would be an act of folly. Such a policy would simply drain specie from the State and so weaken the banks that they would be forced to again suspend. Governor White concluded his communication by expressing confidence in the ability of the legislature to devise measures for ameliorating the situation.[188]

[188]New Orleans *Bee*, December 12, 1837.

The legislature, acting upon Governor White's recommendations concerning the banks, appointed committees to investigate the condition of these institutions.[189] The session was largely taken up with the consideration of proposed bank legislation. The work of drafting appropriate measures progressed rather slowly, however; and it was claimed that the inactivity of the legislature was a deterrent to the advancement of commerce, because of the disinclination on the part of the mercantile classes to act until the uncertainty as to future regulatory measures had been dispelled.[190] The bank bill originated in the Senate and was finally passed by that branch of the legislature near the close of January. Its provisions were characterized as unusually harsh by opponents of the measure and calculated to exercise a sinister influence on the commercial interests. A substitute measure had already been introduced in the House whose provisions were more liberal toward the banks, and it was expected that a compromise would eventually be reached between the two branches of the legislature.[191]

It became apparent with the progress of events that the main features of the Senate bill were likely to be incorporated into the final draft of the bank measure, and the commercial interests began to place reliance upon the exercise of the executive veto to prevent the act from becoming effective. Appeals were made to the sagacity and patriotism of the Governor.[192] The Senate bill underwent some modifications in the House which tended to soften those provisions most objectionable to the commercial interests.[193] The measure was sent back to the upper branch where several of the original sections were reinserted and the proposition was then remanded to the House.[194] The House, however, persisted in its amendments, reincorporating its modifications and appointing a committee of conference.[195] Compromises were quickly agreed upon, and, after having been bandied back and forth between the Senate and the House,[196] the measure was finally ready for the Governor's approval or rejection on February 18. It was thought that the modifications had perhaps rendered the measure acceptable to the Governor.[197]

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[189] *Commercial Bulletin*, January 22, 1838; *Daily Picayune*, January 26, 1838.
[190] *Commercial Bulletin*, January 23, 1838; *Daily Picayune*, January 28, 1838.
[191] *Commercial Bulletin*, January 29, 1838.
[192] *Ibid.*, February 3, 1838.
[193] *Ibid.*, February 10, 1838; *Daily Picayune*, February 10, 1838.
[194] *Commercial Bulletin*, February 15, 1838.
[195] *Ibid.*, February 17, 1838.
[196] *Daily Picayune*, February 18, 1838.
[197] *Commercial Bulletin*, February 20, 1838.

The bank bill as finally enacted provided for the creation of a board of currency, consisting of three members who should be citizens of the United States and should have resided within the State for a period of five years prior to their appointment and who could not be the director of any bank or the business partner of a director. The board was empowered to examine the books of the various banks and report upon their condition. The banks were authorized to emit post notes payable on or before March 1, 1840, the amount of such emission being proportioned to the capital stock paid in. The exact proportion was fixed in the case of each bank and ranged from 20 to 50 per cent. All holders of notes or post notes of any bank should, after the protest of a single note by such bank or banks, be entitled to interest at the rate of 10 per cent until the notes were paid. It was required that two-fifths of all the loans or discounts made by the banks should be let to citizens of the country, and the banks were forbidden to sue a person outside of his parish. Twelve directors were required for each bank, and the State was authorized to appoint half the number of directors in all property banks and the Bank of Louisiana. In all other banks the State should appoint one-fourth the number, except in those banks in which the city of New Orleans appointed directors, in such cases the right of appointment being reserved to the city. Banks were prohibited from selling mortgaged property without an appraisal, except in the case of stock mortgages in property banks. Mortgagors were authorized to retain their title papers.[198]

Governor White's position was described as peculiarly difficult. He was beset by advocates both for and against the bill. A petition was circulated in New Orleans and presented to the Governor, praying that he withhold his approval of the measure.[199] It was estimated that four-fifths of the business men of the city opposed the adoption of the proposed law.[200] "When the welfare of a whole community is at stake," commented the *Commercial Bulletin*, "our present Governor is not the man, who will decide hastily, or prematurely, or without bringing to bear upon the subject, all the lights of experience and knowledge. That it is viewed with fear and suspicion by many of the most intelligent and influential in our city, is apparent from the number and character of the signatures appended to the memorials, praying for its rejection by the Governor. The mercantile class especially mani-

[198] *Ibid.*
[199] *Daily Picayune*, February 22, 1838.
[200] *Defender*, quoted in *Commercial Bulletin*, February 15, 1838.

fests their disapprobation of its provisions, and no doubt the operation of the bill will prove extremely hostile to their interests. Its tendency is to restrict and cripple the banks, and to a very great and serious extent to affect the transactions of commerce."[201]

Governor White vetoed the bank bill on March 2, 1838.[202] He stated in his veto message that the legislature had devoted its attention almost exclusively to this question since the beginning of the session on December 11, and he had hoped that the united counsels of the body would produce a measure acceptable to him. He admitted that certain sections of the bill were not only free from objections but calculated, could they be carried into effect, to promote the public interests. Portions of the measure he deemed to be of questionable efficacy but should not have considered it his duty to oppose the measure because of his doubts as to their wisdom. There were certain features of the act, however, which he conceived to be a violation of fundamental rights. He objected to the measure on several grounds: it was unjust and hostile in its tendency toward the true interests of the people of Louisiana; it was irreconcilable with the State constitution; and it was repugnant to the Constitution of the United States.

The State, he said, had pledged its faith to the banks in their charters of incorporation and it was now proposed to modify these charters and abridge the rights secured in them. This he conceived to be a radical revolution, aimed at the very foundation of the agreements. He objected to the innovation in the qualifications required of directors. Under existing statutes citizenship in the State and a certain vested interest in the corporation were the sole requirements. The proposed law required that directors be citizens of the State for a period of five years prior to their election. He objected to the requirement that stockholders, before being permitted to cast their vote by proxy, should sign the procuration before a notary public. He pointed out that in some of the other States and in many foreign countries notaries public were unknown to the law as authenticators of deeds, and the effect of this provision would be to disfranchise many foreign stockholders. He condemned as unjust the clause declaring that no person might vote for directors on any stock pledged as collateral security. The effect of this provision would be to leave much of the stock unrepresented. The section requiring that two-

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[201] *Commercial Bulletin*, February 24, 1838.
[202] *Daily Picayune*, March 3, 1838.

fifths of the bank capital be let to citizens in the country without a city endorsement the Governor declared to be subversive of the rights of the stockholders. This injustice was accentuated by the requirement that the distribution be effectuated prior to the close of the following September. He said that this agrarian measure could only be carried into effect by producing confusion and distress among those possessing ownership in the banks. He condemned the clause requiring that suits for the collection of loans be brought in the domicile of the debtor as working an undue hardship upon the banking institutions.

The Governor contended that the proposed measure was a violation of both the State and National constitutional provisions prohibiting the impairment of contracts. Moneyed corporations, he said, were in the nature of contracts, and the immunity of such contracts had been embodied in the fundamental code of the State. He held that the assumption that the banks had forfeited their charters when they suspended specie payments was wholly outside the sphere of the legislative and executive departments. The question of forfeiture could only be settled by judicial decision, the case being similar to any other involving property rights. He pointed out that some of the banks had not suspended specie payments, while the charters of others did not contain the forfeiture clause, simply providing that in the event of suspension interest should be paid. He scorned the contention that the provisions of the measure were optional with the banks, since any institution refusing to accept its terms was to be disfranchised and public officials were forbidden to recognize the validity of its notes as currency. The Governor declared that the proposed measure was repugnant to the Federal Constitution which prohibited the States from making anything but gold or silver coin legal tender. This bill, he said, authorized banks accepting its provision to issue post notes payable in 1840, and further authorized the acceptance of these notes as cash in payment of debts.

He also objected to the measure on the ground of expediency. The bonds of the "property banks" had been guaranteed by the State, and should these institutions be forced into liquidation by the operation of this act, the State might be called to account by the foreign bondholders. He thought that the stockholders might evade responsibility by pleading infringement of their contracts and thus the entire burden would be shifted to the State.

The sole grievance against the banks, the Governor continued, was that they had suspended specie payments. No one, he believed, could doubt the public policy and utility of suspension, the only regret being that the measure had not been resorted to at an earlier date. The step had been made necessary by the general derangement of the financial system which, he believed, was an outgrowth of the withdrawal of that great fiscal agency, the United States Bank. He said that the legislative investigation into the condition of the banks had shown them to be fundamentally sound. Admitting the great inconvenience entailed by suspension, he cited the progress made by the State and especially the city of New Orleans, and attributed this progress, in large part, to the credit system of which the banks formed the basis.[203]

The *Bee* characterized the Governor's message as coarse and filled with invective against the members of the legislature;[204] while the *Commercial Bulletin* considered it a strong, sensible document, and praised the Chief Executive for having refused his assent to such an odious measure.[205] The *Commercial Bulletin*, the *Louisiana Advertiser*, and the *Defender* had strenuously opposed the passage of the bank bill, with the *Picayune* remaining disdainfully aloof, but occasionally raising its voice in opposition; while, on the other hand, the *Bee* and the *Courier* strongly advocated the adoption of the measure.[206]

Governor White in his veto message erroneously stated that a citizen after one year's residence in the State was eligible for election to the legislature or to the Governorship. Upon having his attention called to the inaccurate statement, he sent a special communication to the Senate asking that his message be returned in order that a clerical error might be rectified. The Senate refused to comply with the request, and he thereupon sent a special message containing the correction, which was promptly laid upon the table. A resolution was introduced in the Senate authorizing the printing of five thousand copies of a pamphlet, to be distributed among the electorate, containing the Governor's communication to the legislature at the beginning of its session, the bank bill, and his veto message.[207]

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[203] *Commercial Bulletin*, March 5, 1838.
[204] New Orleans *Bee*, March 5, 1838.
[205] *Commercial Bulletin*, March 3, 1838.
[206] *Louisiana Advertiser*, quoted in *Commercial Bulletin*, January 22, 1838; New Orleans *Bee*, March 5, 1838; *Commercial Bulletin*, March 2, 1838; *Defender*, quoted in *Commercial Bulletin*, February 15, 1838; *Daily Picayune*, February 15, 1838, March 8, 1838.
[207] New Orleans *Bee*, March 3, 1838.

The *Bee* ridiculed the statement that the error contained in the veto message had been made by a clerk, asserting that the document had been written in the Governor's own hand, and declared that the lack of knowledge thus evinced by the Governor with the fundamental law under which he governed the State constituted proper grounds for impeachment.[208] According to the *Picayune* the opposition to White's veto of the bank measure was confined to the "Locofoco" element.[209] Resolutions were adopted by a mass meeting of citizens censuring the Governor's course of action.[210] On the other hand, resolutions adopted by another group of citizens in New Orleans characterized the proposed law as unconstitutional, anti-republican, impolitic, and oppressive; and a vote of thanks was tendered the Governor for the good sense, firmness, and patriotism exhibited by him in opposing its passage.[211]

White was charged with having undergone a change of opinion in regard to the banks since the beginning of the legislative session. It was pointed out that in his annual communication to the legislature upon its convocation he had asserted the inherent right of the State to adopt such measures as might be necessary to insure financial stability, while in his veto message he dwelt upon the inviolability of bank charters.[212] There was indeed a change in the tenor of the Governor's remarks on this subject. The explanation of this change of opinion is found, however, in White's assertion that the legislative investigation, recommended by him, into the condition of the banks had demonstrated the fundamental soundness of these institutions. The bank measure was re-passed by the Senate by the requisite constitutional majority;[213] but the Governor's veto was sustained by the House where the vote stood 18 for and 21 against the measure.[214] Hostile criticism of the Governor's course of action was continued for some time and he was denounced by his political opponents as a simpleton and a demogogue.[215] Serious opposition was silenced, however, by the rapid recovery of the banks. The resumption of specie payments on the part of several institutions in the spring of 1838 and the contemplated resumption on the part of others revived the spirit of optimism.[216] There were press comments as late as 1842, how-

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[208] *Ibid.*, March 5, 1838.
[209] *Daily Picayune*, March 4, 1838.
[210] New Orleans *Bee*, March 7, 1838.
[211] *Daily Picayune*, March 9, 1838.
[212] New Orleans *Bee*, March 7, 1838.
[213] *Daily Picayune*, March 7, 1838.
[214] *Ibid.*, March 9, 1838.
[215] New Orleans *Bee*, quoted in *Arkansas State Gazette*, April 25, 1838.
[216] *Arkansas State Gazette*, May 23, July 18, 1838.

ever, condemning White's action in vetoing the bank measure. It was asserted that had he signed the bill the banks would have been forced to liquidate and throw themselves on the mercy of the people. Instead they were permitted to continue on an unsound basis for four long years, thereby postponing the period of final readjustment.[217]

Governor White was elected to the lower House of Congress in July, 1838, defeating his opponent for the office by a majority of 919 votes.[218] He had been nominated by what his political opponents termed the "bank group" while the bank bill was awaiting his approval or rejection; and it was intimated that this nomination had influenced his action in regard to the measure.[219] The remainder of White's gubernatorial term was not marked by any event of striking importance.

The Governor was unusually brief in his message to the legislature on January 7, 1839. He first commented on the improved conditions in the realm of finance and business. His remarks were confined to statements of a retrospective nature as he preferred to leave recommendations for future policies to his successor who would shortly take office. He said that his term of office had been a period of unusual ferment and agitation and that he had been confronted with many problems difficult of solution. That he may have erred, he doubted not, but his aim had always been the achievement of the greatest good for the greatest number.[220]

The *Bee*, which had recently raised the banner of the Whig party, [221] commented on the Governor's message as follows: "It is a document, which like all which have emanated from this distinguished functionary, is marked by sound and cogent views, and excellent considerations of local and general policy, couched in lucid, perspicuous and forceful language. Unlike many of the chief magistrates of the states, Governor White's messages are invariably distinguished by their brevity. He does not deal in broad and inapplicable generalities, and prolyx dissertations upon national affairs, but confines himself to topics of immediate and paramount interest to the people of the state over which he presides. He has likewise the happy talent of condensing all that is

[217] *Courier*, March 11, 1842.
[218] *National Gazette*, July 23, 1840.
[219] New Orleans *Bee*, March 7, 1838.
[220] *Ibid.*, January 8, 1839.
[221] *National Gazette*, January 26, 1839.

valuable without impairing its effects by too much concentration. Hence his messages are perhaps more generally read than those of almost any governor in the union."[222]

Governor White retired from office on February 4, 1839, and was succeeded by A. B. Roman, who had been his immediate predecessor.[223] White resumed his seat in the lower House of Congress in December, 1839.[224] Organization of the body was delayed approximately two weeks, due to a heated controversy which developed concerning the seating of four members of the New Jersey delegation. The membership of the House was about equally divided between the Whigs and Democrats and therefore party control in its organization might depend upon which set of delegates was admitted to seats on the floor. White consistently voted for the seating of the Whig contestants, who at least had the better legal claim to membership. The Democratic delegates were finally admitted.[225] White voted for Robert M. T. Hunter for Speaker. Although Hunter's political affiliation was somewhat in doubt, his election was generally conceded to be a Whig victory.[226]

White was given membership on the Committee on Private Land Claims.[227] He was also appointed to a special committee authorized to investigate charges of malversion in office against the American consul at Havana. This committee reported unanimously that no evidence had been produced to substantiate the charges, but recommended a more thorough investigation by the Executive Department of the Government.[228] White voted in opposition to the passage of the Sub-Treasury act in July, 1840,[229] and voted in favor of its repeal during the special session of the following summer.[230]

White was re-elected to Congress in July, 1840, receiving more than twice the number of votes polled by his opponent.[231] A special session of the Twenty-seventh Congress was called by President John Tyler shortly after his accession to office, and early in this session White was appointed to serve on a joint committee to consider by what token of respect the country might express its sense

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[222] New Orleans *Bee*, January 8, 1839.
[223] Alcée Fortier, *Louisiana*, vol. II, pp. 639 *ff*; *Daily Picayune*, February 5, 1839.
[224] *Biographical Directory of the American Congress*, p. 1689.
[225] *National Gazette*, December 14, 17, 24, 1839.
[226] *Ibid.*, December 19, 21, 1839.
[227] *Ibid.*, January 2, 1840.
[228] *Ibid.*, August 18, 1840.
[229] *Ibid.*, July 4, 1840.
[230] *Ibid.*, August 12, 1841.
[231] *Ibid.*, July 23, 1840; Baton Rouge *Gazette*, November 7, 1840.

of loss in the death of President William Henry Harrison.[232] He was also appointed to a select committee to which was referred that portion of the President's message concerning the removal of the mortal remains of the late President.[233] White voted in favor of both the measures, introduced at this session, providing for the creation of a Fiscal Corporation to assume the functions formerly performed by the United States Bank.[234] Neither measure became operative, however, due to the interposition of the executive veto.

There is no important legislation connected with White's name during his later Congressional career. He was, as always, solicitous of the interests of his State and particularly of those of his immediate section. In the last session of the Twenty-sixth Congress he introduced a bill extending the limits of the port of New Orleans. The measure, however, failed of passage due to the congested condition of the House calendar. He again introduced the bill during the first session of the Twenty-seventh Congress and secured its passage without difficulty.[235] He also fostered a bill abolishing imprisonment for debt in Washington County, District of Columbia.[236] White made his last Congressional speech in the closing hours of the Twenty-seventh Congress. It was a reply to charges of disloyalty on the part of the people of Louisiana during the "late war" made by some of the members in the course of the debates on the pending bill for the remission of General Jackson's fine which had been imposed by the Louisiana legislature in 1815.[237]

White was nominated by the Whigs for re-election to Congress in 1842,[238] his Democratic opponent in the contest being Miles Taylor.[239] White did not return to the State to campaign in behalf of his candidacy, but remained at his post in Congress which did not adjourn until some time after the election had been held. His administration as Governor was attacked in conjunction with that of Henry Johnson, who was seeking another gubernatorial term on the Whig ticket, as having been extravagant and wasteful.[240] Early returns from the election apparently indicated a Whig victory, for the Whig press rejoiced at the signal triumph which the party had achieved.[241] As more complete returns were obtained,

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[232] *National Gazette*, June 5, 1841.
[233] *Ibid.*, June 26, 1841.
[234] *Ibid.*, August 10, 26, 1841.
[235] *Cong. Globe*, 27 Cong., 1 Sess., p. 98; *National Gazette*, July 13, 1841.
[236] *Cong. Globe*, 27 Cong., 2 Sess., pp. 650 ff.; *Courier*, June 27, August 8, 1842.
[237] *Cong. Globe*, 27 Cong., 3 Sess., p. 384.
[238] Baton Rouge *Gazette*, May 21, 1842; New Orleans *Bee*, July 1, 1842.
[239] *Courier*, June 23, 1842.
[240] Opelousas *Inquirer*, quoted in *Courier*, June 29, 1842.
[241] New Orleans *Bee*, July 5, 1842.

however, it became evident that the Democratic ticket, headed by Alexander Mouton for Governor, had been swept into office.[242] There was considerable discontent in the State with prevailing economic conditions, and, as usually happens in such cases, the party in control was held responsible.[243] W. H. Sparks attributed White's defeat in this election to a treacherous conspiracy;[244] but a perusal of the newspapers of the period affords no evidence in support of this contention. It merely appears that White, along with most of the Whig candidates in this election, was a victim of the Democratic overturn. The *Bee* attributed the Whig defeat in part to the tendency of that party to maintain one of the "triunvirate"—Johnson, Roman, and White—in the gubernatorial chair, and to the demand for rotation in office.[245]

After his retirement from Congress White returned to his sugar plantation in Lafourche Parish.[246] The severe winters spent in Washington had weakened his constitution and his health began to fail perceptibly. His final illness was attributed in part to the impairment of his physical powers resulting from the accident aboard the *Lioness*. The end came on April 18, 1847, when he succumbed to a bronchial infection.[247] His body was taken by steamboat from New Orleans to Thibodeaux where interment was made.[248] The legislature, which was in session when his death occurred, passed joint resolutions expressing sorrow at the news of his death and appreciation of the public services rendered by him to the State; and, as a mark of respect, it was resolved that each member should wear a badge of mourning for thirty days, and that all should accompany the funeral procession from the late Governor's place of residence to the point of embarcation.[249]

White's numerous eccentricities were freely admitted by his friends;[250] but even his most bitter political opponents never attempted to impeach the integrity of his private character. His admirers frequently remarked upon his bland affability, and he was described as a man of plain, simple manners who probably never wore a sword or a ruffle.[251] His honesty and benevolence

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[242] *Courier*, July 9, 15, 1842.
[243] New Orleans *Bee*, July 12, 1842; *Courier*, May 11, 1842.
[244] W. H. Sparks, *The Memories of Fifty Years*, p. 459.
[245] New Orleans *Bee*, July 12, 1842.
[246] W. H. Sparks, *The Memories of Fifty Years*, p. 459.
[247] *Daily Picayune*, April 20, 1847.
[248] *Ibid.*
[249] *Ibid.*; *House Journal of Louisiana, 1846-1847*, p. 79.
[250] Baton Rouge *Gazette*, April 24, 1847; *A. Porter to J. B. Harrison*, Washington, in Burton Harrison Collection, March 8, 1835.
[251] *Louisiana Advertiser*, April 21, 1834.

were freely admitted by his political foes during the most heated campaign of his public career.[352] White's political opponents accounted for his great popularity by the assertion that his character was of such a negative type that it was incapable of arousing enmity.[353] A story is related as being illustrative of White's true character. While in Congress, prior to his election as Governor, he presented a claim, on behalf of one of his constituents, to the Secretary of the Treasury. After continued delay, in spite of repeated inquiries, White notified the Secretary that should the claim not be adjusted by a given date, he would present his case to the President. On expiration of the time limit without action being taken on the matter, White repaired to the Executive office, seated himself without removing his hat, and demanded an audience with the President. When General Jackson appeared, White bluntly informed the President that his servant had neglected the performance of a duty toward one of his constituents and requested an immediate settlement of the matter. The claim was then adjusted without further delay.[354]

In speaking of those ennobling attributes possessed by White which had enabled him to defeat in the race for popularity the powerful genius of a Livingston and the brilliant intellect of a Dawson, an admirer concluded: "May his example not be lost upon those who now or may hereafter be called to wield the destinies of the State; but may they ever revere the memory, cherish the example, and emulate the high and noble qualities as a citizen, as a husband, as a father, and as a public servant, of Edward D. White."[355]

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[352] Covington *Chronicle*, quoted in New Orleans *Bee*, April 30, 1834.
[353] New Orleans *Bee*, June 6, 1834.
[354] Baton Rouge *Gazette*, April 24, 1847.
[355] *Ibid.*

EDWARD LIVINGSTON'S PLACE IN LOUISIANA LAW*

By IRA FLORY, JR.

INTRODUCTION

Students of general American history usually have at least a bowing acquaintance with certain phases of Edward Livingston's career: as Jackson's secretary of state who drew up the Nullification Proclamation; as the Republican in the House of Representatives who led the attack on the Alien and Sedition Acts; and as the minister to France who settled some outstanding spoliation claims but left the country rather than explain some unfriendly statements made by Jackson in a message to Congress. Reference is sometimes made to him as one of the leading members of the House for six years in the 1790's and for another six years in the 1820's, to say nothing of his being mayor of New York City, United States senator from Louisiana, and Federal district attorney in New York.

But an equally interesting, if not quite so important, part of Livingston's life is seldom mentioned. A leader of the New York bar goes to the chief city of a newly-acquired territory—which, incidentally, had been bought largely through his brother, Robert, the famous Chancellor Livingston of New York—as the best place to earn the money for paying off a heavy debt. This obligation he had assumed on learning that an employee in his district attorney's office had taken a hundred thousand dollars while he himself had been helping to check a yellow fever epidemic as mayor of the city, catching the disease himself. In his adopted home he practices his profession successfully and, being a widower, marries a French refugee from San Domingo, and after a time becomes involved in one of the most important lawsuits of the day with a former president of the United States. When the British invade the region, he

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acts as military secretary, interpreter, and confidential adviser for his old friend who leads the American forces. And finally, before entering the national scene again, he serves in the legislature of his adopted state, helping to codify her civil law from the mass of laws inherited from three nations. He also begins his Penal Code, which makes him famous all over the world as one of the foremost thinkers of that time.

The years of law practice in both New York and New Orleans have more significance in Livingston's case then in that of most prominent members of the bar. Every hour he spent upon the common law of his native state, and all his study of the differences existing in Louisiana bore fruit when he was ready to draw up the codes. His own famous suit with Jefferson over the Batture Ste. Marie on the New Orleans riverfront was fully reported in law journals and pamphlets, but—then as now—the case was little known outside the profession.

The Battle of New Orleans provides a welcome interlude in Livingston's career, bringing as it did the days of feverish preparation and patriotism extending even to Lafitte's pirates in Barataria. Then, with the news of the peace treaty signed two weeks before at Ghent, we can almost picture the genial, stoop-shouldered, democratic aristocrat laying his title of colonel aside reluctantly, and turning his pen to more peaceful subjects.

CHAPTER I

Beginnings at the Louisiana Bar

New Orleans became the city of opportunity to many an American after 1803. To it came six-foot backwoodsmen, selling the goods they'd poled down the Mississippi on flatboats; weather-beaten Yankee skippers, taking on cargo before lifting sail; leisurely planters looking after the sale of their cotton and sugar; along with the planters, brokers and factors having eyes on the current market prices; migratory merchants who thought they heard opportunity calling. Then, too, there came the lawyers, to draw up the commercial contracts, to take damage suits to court, to defend and prosecute lawbreakers, and to enter politics.

Among these last was Edward R. Livingston of New York, former mayor of the city and leader of the bar, and a member of one of the most prominent pre-Revolutionary families in the state. There must surely have been something of the adventurer in a man already past his first youth, to send him seeking fame and fortune in a far-off city still much more cosmopolitan than American. In New York he had the stability of a dependable law practice, the security of friends and family; already distinguished in his profession, his success in his own city was as assured as anything can be. Many hours of study, however, must come before he could take his first small case in the courts of New Orleans.

Livingston fitted well into his new environment. His scholarly habits lessened his need for social life, but he could, and often did, become a delightful companion when with intimates.[1] Tall, slender, and slightly stoop-shouldered, his features were clear-cut, his mood generally meditative, and his manner dignified. He was fond of clearing away the non-essentials of the law, his opinions being the result of arduous labor in sifting the facts. There was nothing of the orator in his courtroom manner; he spoke with the calm force of conviction, and everyone present gave him full attention. His eloquence was purely intellectual, gathering power by cumulative argument, never by brief flashes of declamation. Never did he become a drudge, because of two things: his variety of interests, making it possible for him to gain relaxation by changing tasks; and the original and philosophical outlook he had for even trivial things. A certain innate optimism kept his troubles from weighing too heavily on his mind, and he never allowed professional jealousies to warp private friendships.[2]

Arriving in New Orleans on February 7, 1804, Livingston was soon launched on his project to pay off his debts from professional profits. There was little ready cash with which to pay lawyers at that time, and he expected to take parcels of land as part payment of his fees, and hold them for the rise in price that would surely come as the city grew. By April Livingston had become acquainted with the unusual features of local practice,[3] and took over several

[1]Charles Havens Hunt, *Life of Edward Livingston*, pp. 122-123.

[2]Charles Gayarré, "The New Orleans Bench and Bar in 1823," *The Louisiana Book*, p. 68.

[3]One custom peculiar to the city because of the presence of a mixed population was the use of both English and French in court proceedings. The judge was almost forced to know both languages, and often a client had to secure a lawyer speaking each language to plead his case. The juries usually contained both Americans and Creoles, and every court must have its interpreter to translate the testimony of witnesses, the evidence, and the judge's instructions to the jury, where he was unable to do it himself. Where the facts had to be thus presented twice, the French-speaking jurors in at least one case went outside to cool themselves while the English-speaking attorneys had their say, and the American jurors similarly avoided testimony in French. Gayarré, *op. cit.*, pp. 69-70.

cases. His chief regret was that he could not have with him the children of his first marriage, Lewis and Julia Livingston, because it was thought the climate would be bad for their health. Julia was staying with an aunt in New York, and Lewis was in France with Mrs. John Montgomery, another aunt. Alone, then, in a strange city, the thirty-nine-year-old lawyer began to make new friends and acquaintances, professional and social.[4] Mr. Livingston's colleagues of bench and bar in New Orleans survive for us today mostly as mere names, yet occasionally they take on life in brief sketches.

John Randolph Grymes was said to belong to an aristocratic Virginia family, and perhaps came himself in the class of an F. F. V. black sheep. His flow of English was easy, if sometimes ungrammatical, and he had the reputation of making his most brilliant arguments when the least advance work had been done. He spent lavishly of his large earnings, being constantly dunned for his debts. If pressed too hard, he would occasionally write out a check on the first bank that came to mind; the matter was taken in the spirit it was meant—as a joke—and the money was always paid eventually with great good-nature. His manners were charming, drawing to him even those who disliked him, and he allowed himself many peculiarities and privileges with an easy indulgence. Later in life he paid his debts and left something for his family.[5]

Moreau Lislet was a native of France, a legal wit who won his case by affecting sympathy for the other side. Then with an airy wave of the hand he would dismiss the pretensions of his adversary, and murmur in compassion at the other's certain defeat. Deeper than he seemed, the small, round Frenchman was a keen jurist, and was an important element in codifying the Louisiana civil law.[6]

Another transplanted Frenchman following the law was Pierre Derbigny, who also helped Livingston in working on the codes. He was born in Laon, France, but his family was royalist, and left the country to try their luck in America. Living successfully in Pennsylvania, Missouri, and Florida, Derbigny finally settled on Louisiana as his home, becoming a member of the state Supreme Court in 1813. All through life he was said to be handicapped by having to translate his ideas from French into English.

[4] Hunt, *op. cit.*, p. 115.
[5] Gayarré, *op. cit.*, p. 65.
[6] *Ibid.*, pp. 68-69.

However, he was a sound judge and lawyer, and opposed Livingston on some important cases, notably that of the batture. In 1820 he resigned from the bench to run for governor.[7]

As a native Louisianian, Etienne Mazureau held out staunchly against the American invaders and their common law. When irritated by what he considered pointless criticism, he threw back his head and gazed contemptuously at the ceiling. His oratorical manner was compounded of denunciation and calm appeal, of brow-beating fierceness and conciliation. Yet with it all, he disdained to lower himself to using trickery, and never took undue advantage of his fellow attorneys.[8]

Another who migrated to Louisiana was Alfred Hennen, a New Englander. Tall, handsome, and self-possessed, he always stuck to the facts in his cases, without allowing himself any rhetorical flanges. His string of authorities was always large, and he put implicit faith in the letter of the law. Like most practitioners from other states (Livingston being one exception) he considered the English common law much superior to the civil law of the Latin peoples.[9]

Henry Carleton was a great student of the civil law, being one of the translators of the Spanish Partidas. He was gentle and scholarly by nature, much beloved by his friends.[10]

Judge Francois Xavier Martin came to Louisiana from North Carolina, and from Marseilles, France, before that, serving as a justice on the state Supreme Court from 1815 to 1837, and as chief justice from then until 1845, a year before he died.[11] He had previously been appointed a justice in the highest court of the territory in March, 1810. Much of his fame is due to his writing of the first comprehensive history of Louisiana; another task he undertook was to keep reported the Supreme Court cases from the time he joined the court, there being no court reporter in those days. His judicial opinions were the result of constructive work,

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[7] *Dictionary of American Biography*, V., pp. 248-249.
[8] Gayarré, *op. cit.*, pp. 55-56.
[9] *Ibid.*, p. 55.
[10] Henry S. Foote, *The Bench and Bar of the South and Southwest*, pp. 194-195.
[11] Judge Martin was a bachelor, and left all of his estate estimated at $400,000 to a brother living in France. Now, the legislators had passed an act sometime before his death, taxing ten percent all inheritances going to foreigners. The legatee came to Louisiana at his brother's request several months before the end came, and when the estate was settled, the attorney general claimed ten percent for the state, on the grounds that the brother's coming to the state had been for the purpose of evading the law. Other matters entered into it, but this represents the general situation. Mr. Martin had been known more than once to give his opinion that the law was unfair. The lower court decided for the state's contentions, but on the appeal the Supreme Court upheld its former chief justice, declaring that it believed there had been no intention of fraud. The will was therefore valid.

and he did much to tide the state judiciary over the early trying period of organization from 1804 until 1825, when the code was promulgated.[12]

Judge George Mathews was another prominent figure of the Supreme Court during the first part of the century. His early education had been in the common law, and he was never especially noted for dealing in the civil law. This did not prevent his attaining a high position as judge, however, because of his ability to find the equity of a case, his well-written opinions, and his integrity.[13]

Another who sat on the bench was Joshua Lewis, a native of Kentucky and a veteran of the Battle of New Orleans. He learned enough French after coming to Louisiana to charge a jury himself in the law on a case.[14]

During the first months in his new home Livingston stayed pretty steadily at his work. A letter written on May 27, 1804, to his sister, Mrs. Garretson, gives some idea of his impressions of the place and people.[15]

> . . . My profession and other circumstances (he writes) have given me a very extensive acquaintance in the province, and the impressions I have received are very favorable to the character of the inhabitants. They are, in general, hospitable, honest, and polite, with excellent natural abilities, and, in short, people with whom a man who had nothing to regret might pass his life as happily as can be expected in any part of this uncertain world . . .

About this time there began his romance with a refugee from the black uprising in French San Domingo, Madame Louise Moreau de Lassy, the young widow of a Jamaica planter. They did not yet know English. As the climax to this case of two people with entirely different backgrounds meeting and falling in love in a neutral city, the wedding was performed in the old Ursuline Convent on Conde Street, at about midnight, June 3, 1805. A cousin of Mrs. Livingston and a nephew of the Spanish Marquis de Casa Calvo helped to make it a double ceremony, in the little chapel lighted only by tall candles. Only a few friends were there to take part.[16]

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[12] *Biographical and Historical Memoirs of Louisiana*, I, p. 83.
[13] *Ibid.*, pp. 82-83.
[14] Gayarré, *op. cit.*, pp. 54-55.
[15] Louise Livingston Hunt, *Memoir of Mrs. Edward Livingston*, p. 30.
[16] *Ibid.*, pp. 31-32.

In a house on Chartres Street Livingston lived with the members of his wife's family. There was a brother, Major Auguste Davezac, the uncle, Jules Davezac, a sister, and her mother. The family talk was lively on the wide porch with cool summer breezes blowing through the shading fig and orange trees in the yard. Almost every visiting celebrity came to the Livingston house, Mrs. Livingston acting as hostess in the way that made her a leader in Washington society when her husband was secretary of state and member of Congress. She was an intelligent and gracious woman, inclined to be somewhat pensive and serious. Appreciating her husband fully, she always retained an interest in his work, and he often submitted important papers for her criticism before making them public. A daughter, Cora, born in 1806, became another close companion of her father, often going with him on his frequent walks along the river.

With a satisfactory home life, then, Mr. Livingston was able to give himself whole-heartedly to his legal labors. When these didn't entirely satisfy his sense of duty, he took on such other jobs as writing the codes and serving in the state legislature during his score of years in Louisiana. Though he intended going back to New York when financially able, he wanted to do something extraordinary for the community that gave him a living. And so he did.

CHAPTER II

Lawyer

Livingston's general practice in New Orleans was large.[17] Most cases reaching the Supreme Court were civil, usually suits for damages, though occasionally a criminal case came up from the district court, and one of each is chosen as representative of the everyday grist that came to Livingston's mill. Care has been taken to avoid the very important and complicated ones; others requiring a research into the old Spanish, French, and English customs are too hard for a layman to understand, much less discuss. Thus, those picked are short, simple, and easily grasped.

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[17]In Appendix III are listed, for reference and comparison, the cases in which he participated as lawyer before the highest court of territory and state, for the ten-year period of 1809-19. The fall term of 1809 was the first included in the reports of Francois Xavier Martin, who joined the court in March of the next year, and spent his autumn vacation in collecting the back opinions of that term. There was no systematic reporting of cases before that.

One of the rare criminal trials before the superior court then was the case of Territory v. Barran.[18] Moreau Lislet and Livingston appeared for the defendant, and the Territory of Orleans was represented by Grymes and Derbigny. Most of the report is concerned with whether the man whose name has allegedly been forged can testify against the accused. The defense lawyers produced several instances after the time of Queen Elizabeth, forbidding such testimony. The prosecution contended that these rulings were due to a statute passed in Elizabeth's time, and were not grounded in the common law at all. The court recognized that the admission of the evidence of interested parties was different in a forgery case, but the general rule of allowing testimony of all except those directly involved would still hold. The defense thus lost its point, and the witness was sworn in. At the end of the hearing, the jury could not agree on a verdict, resulting in a mistrial. The governor ordered that a *nolle prosequi* be entered. In other words, the matter was dropped.

The suit of Jacob et al. v. Ursuline Nuns[19] was the result of an inheritance, Livingston taking the part of the defendants. A free negro overseer worked for the convent without receiving wages from 1796 until his death in 1811, though in 1801 he was given two arpents of land by the Superior and nuns; but after Jacob's death, his descendants were dispossessed, and the land sold. Their counsel produced the instrument by which the nuns and Superior donated to Jacob the use of the land, but asked chiefly for the wages which the old man never received for over fifteen years.

Livingston began by showing that the convent lands could not be disposed of by nuns and Superior. "These instruments cannot be received; the nuns could not dispose of their land, without the authority of the ecclesiastical superior, the bishop of his vicar general." As authority, he cites the Constitution of the Ursuline Nuns, which said that the bishop was to sign all contracts and leases.

The Court agreed with the defense counsel that the instruments presented were not legal, being made without the necessary license, and therefore not binding on the community. As to the wages supposed to be due for unpaid labor, it went on to say that a party was entitled to wages only when they were agreed upon beforehand, and if the labor was done with the hope of receiving

[18] 1 *Mart.* (*O.S.*), 208.
[19] 2 *Mart.* (*O.S.*), 269.

land, wages could not be demanded. Though overseers were usually paid quarter-yearly, no mention had ever been made of anything being due, even by the deceased before he died. Anyhow, the old servant had received full use of the land during his lifetime, and, considering that he was then in his sixties, his services were probably not worth more than his keep. Thus, the Court favored the view that Jacob had given his work to the nuns without expecting payment other than his support.

One interesting thing about the reports of these cases is that win or lose, Mr. Livingston's arguments are given in more than ordinary fullness. For he did lose rather often, though always after making the most plausible construction he could of the facts on his side.

One early unfortunate incident involving Mr. Livingston occurred in connection with Aaron Burr's plans in the Southwest, whatever they might have been. After the transferral of his New York property to help pay the amount his subordinate had stolen, one of Livingston's private debts of about two thousand dollars, held by the firm of Dunham and Davis, had been assigned to Burr, who in turn gave it to a Dr. Erich Bollman to collect. Livingston was unable to honor the draft for a long time, but finally did so after selling some property. He mentioned the matter casually to General James Wilkinson one night when the latter was his guest at dinner, speculating as to how Burr could owe so much to a man apparently as poor as Bollman. The General didn't seem particularly impressed at the time, though it appears he had been himself much concerned in Burr's scheme until it seemed likely to fail. Then he decided the city's safety demanded that he put New Orleans under martial law, and arrested Bollman and two others on the charge of conspiracy.[20]

To this point Livingston was no more interested than any other member of the local bar at such high-handed action of the military governor. A younger lawyer named James Alexander, however, tried to secure a writ of Habeas Corpus from a judge, and being told to apply in open court, he asked Livingston's assistance. This was given, and the writ was granted. Wilkinson then spoke in court to justify his arrests on the grounds of grave danger to the

[20]Hunt, *op. cit.*, pp. 126-134.

state, ending with the charge that a certain two members of the bar were also in the conspiracy. The presiding judge offered to have his written testimony taken, which he declined. Livingston then demanded that he not be allowed to leave the room without giving some proof of his assertions. This request was denied.

The next day Livingston explained fully the matter of the debt to Burr, producing the note authorizing Bollman to collect.[21]

> Dear Sir, (it read) Doctor Bollman will receive whatever you may be disposed to pay him on my account, and will give a discharge on payment of fifteen hundred dollars. A part, at least, of this sum will be necessary to him; but I should not have troubled you if I could have paid him from other resources.
>
> A. Burr.
>
> Philadelphia, 26th July, 1806.
> To Edw. Livingston, Esqre.

He also declared that whatever plans Colonel Burr might have had, he himself had no part whatever in them, and had never been in communication with him at any time. He rather expected to be arrested, as Alexander was, but soon General Wilkinson was discredited in the city, and the affair blew over. Through it all Livingston remainded calm, and expressed the belief that no one had ever seriously questioned his motives. "There is a force in the language of truth, there is a commanding aspect in the looks of innocence, that can rarely be assumed by falsehood or guilt; and I am persuaded few if any of my auditors retired with impressions to my prejudice."[22]

When Jean Lafitte got into trouble, he could afford the best in the available legal talent, and secured John R. Grymes and Edward Livingston. The retaining fee was reported to be generous, twenty thousand dollars for each lawyer. And yet, at fifty, attaching himself to the fortunes of a man so notorious as the smuggler, privateer, or pirate—whichever he was—indicates that Livingston felt the attraction of something more than the money. Perhaps it was the glamor that surrounded the last of the corsairs and his brother, Pierre. Maybe there was something in this witty,

[21] *Ibid.*, p. 130.
[22] *Ibid.*, p. 131.

dangerous man himself that he liked. Or, as isn't likely, it may have been just another case. Anyway, some of the gossipers in the coffee shops said that the two Yankee lawyers had sold their birthrights for a mess of pottage."[23]

The story of the Lafittes and their colony at Barataria is well-known. Operating on letters of marque given by Spain's revolting South American colonies, the band of privateers captured Spanish merchant vessels in the Gulf of Mexico and, after scuttling the ship, brought back the goods or slaves to be sold in Louisiana. Of course, no customs duty was ever paid, and prices were considerably lower than those of ordinary shopkeepers. For this reason, perhaps, public sentiment in New Orleans was on the whole tolerant toward the Baratarians. The state legislature ignored Governor Claiborne's appeals for aid in suppressing these activities, and when he offered a reward of a thousand dollars for the capture of Jean Lafitte, dead or alive, the pirate ridiculed his attempt by duplicating the offer for bringing the Governor to Barataria. The Lafittes and several of their men were once captured on a smuggling expedition, but they merely jumped bail and forfeited the twelve thousand dollars, a small item to such prosperous business men. At another time, a force of militia sent to destroy Barataria was bribed by the outlaws, and sent home again.

But Claiborne didn't give up. A friendly grand jury of American bankers and merchants met secretly long enough to hear the testimony of many who swore to acts of piracy by the Baratarians. Indictments were returned against the Lafittes and two subordinates, supposedly Dominique You and Beluche. Pierre was arrested by soldiers and thrown in the calaboose before the news could spread of what had been done. Bail was denied; the Lafittes were in real trouble at last."[24]

It was at this critical period that Jean Lafitte, a fugitive himself, hired his two lawyers. But try as they would, they could not get Pierre released, even on the grounds that the close confinement and chains were dangerous to his health."[25] All through the summer of 1814, the matter hung fire, while New Orleans heard rumors of an approaching English invasion. Though their first efforts hadn't succeeded, the lawyers' client invited them about this time to his colony to collect their fees. Livingston declined,

[23] Lyle Saxon, *Lafitte the Pirate*, p. 119.
[24] *Ibid.*, p. 112.
[25] *Ibid.*, p. 122.

but Grymes, young and adventurous, made the trip and was royally entertained for a week, before being started homeward with appropriate gifts from his host. His share, it was said, was gambled away at the numerous plantation stopping places before he reached the city.[26]

Sometime before this, the English had made a bid for Lafitte's help in invading Louisiana, to which he had given a noncommittal answer and offered this information and his services to Claiborne through John Blanque, a friend. They were refused on the advice of Commodore Patterson of the United States navy, and Colonel Ross of the regular army. That night Pierre Lafitte escaped from jail.[27] Instead of answering Lafitte's anxious letters, Ross and Patterson hurried their preparations for invading the privateers stronghold. The morning of September 16, the expedition surprised the smugglers, who did not want to fire upon the American flag. They ran away into the marshes instead, eighty of them being captured. Several days were then spent in confiscating movable wealth in the Barataria Bay hangout, and destroying everything else. The estimate of ships, goods, and merchandise carried off or destroyed was placed at half a million dollars.[28]

This regrettable breach of faith brought Grymes and Livingston into the picture again, with the Lafittes now almost penniless fugitives. They filed suit against the United States government to recover damages for the "raiding expedition," though the ones taking possession of the confiscated goods hurried to dispose of them before they could be attached. Nothing ever came of this suit, which was renewed from time to time, especially after the Baratarians distinguished themselves in the Battle of New Orleans and won a pardon from President Madison.

The other service the lawyers gave their client was in acting as go-between for negotiations with the authorities to get exemption from arrest for the pirates, in return for helping to defend the city. Secret meetings were held with Lafitte in his cottage near the ramparts, and word brought from Dominique You and other captured privateers to their chief. General Jackson's stern refusal of aid from "hellish banditti" was modified when he saw how serious the situation really was, and even Claiborne began to find some excuse for the smugglers.

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[26] *Ibid.*, pp. 126-128.
[27] *Ibid.*, p. 149.
[28] *Ibid.*, p. 152.

Livingston, as Jackson's military secretary, must have known of the scarcity of arms and ammunition, especially of flints for the guns, and from him Lafitte may have learned of it. It seems he had a supply of flints and ammunition hidden away in a swamp warehouse, and at some undetermined time and place he offered this, himself, and his men to Jackson. The offer was accepted. The former pirates could now come out of their hiding places and take their places as patriots defending their country.

Not long after the Battle of New Orleans, the Lafittes established themselves in a new base at Galveston, Texas. Livingston no longer acted as their lawyer after this migration.

In 1833[29] Livingston appeared before the United States Supreme Court in the case of The Planter (Peyroux v. Howard),[30] an admiralty suit appealed from the Federal district court for the Eastern District of Louisiana. Livingston, representing the libellants, Howard and Varion, had brought a libel *in rem*[31] against the vessel, The Planter, for repairs made on the steamboat in New Orleans. The Planter was owned by a New Orleans firm; and, since repairs were made there on the orders of the owners, this was her home port.

The chief legal question was whether there was by admiralty law a lien justifying this libel *in rem* against the repaired steamboat; or, whether the claim for repairs was merely a personal obligation of her owners to be enforced against them by a libel *in personam*. The trial court had decided in favor of the lien theory and allowed the libel *in rem* for the amount of two thousand, one hundred, and ninety-three dollars, and thirty-five cents.

This question had been discussed in 1819 by Mr. Justice Story in The General Smith.[32] He there said that the general maritime

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[29]This section was thoroughly revised by my father, so that the rather close points of law might receive the correct emphasis. He first suggested that the case might be useful in this study, because of its prominence in the history of maritime law; even though, while a Louisiana case, Livingston was no longer a resident of the state at the time of arguing it before the Supreme Court.

[30]*7 Pet. 324; 8 L. Ed. 700.*

[31]Admiralty proceedings fall under two great classes—proceedings *in rem* and proceeding *in personam*. Where the libellant has a lien recognized by admiralty jurisprudence, he can proceed by a libel *in rem* and seize and sell the ship or other *res* on which the lien exists, and subject the proceeds of the sale to his claim. Where he has no lien, he can only proceed by a libel *in personam* against his debtor and get a personal decree for the amount due, and he has no security for his claim. For a full discussion of "Proceedings in Rem and in Personam," see *Hughes on Admiralty*, p. 400.

[32]*4 Wheat. 438; 4 L. Ed. 609.*

law was sufficient to allow the ship to be libelled—i. e., seized and sold, the libellants to be paid out of the sale price—where the ship was from a foreign country or another state. Justice Story further said by way of a dictum: "But in respect to repairs and necessaries in the port or State to which the ship belongs, the case is governed altogether by the municipal law of that State; and no lien is implied, unless it is recognized by that law." Since The Planter, the repaired steamboat, was a Louisiana vessel repaired in a Louisiana port, and since Louisiana law allowed a lien on a ship for repairs or supplies furnished to her, except where the ship left the port before the privilege was exercised, the real question for the Supreme Court was whether the dictum of Justice Story in The General Smith was to be followed as sound admiralty law.

Mr. Mouton, counsel for appellants, the shipowners who were claimants below, opened by contending as follows: first, that the court below has no jurisdiction in admiralty; second, that the libellants had waived any lien, if any was given under Louisiana law; and third, that even if the court had jurisdiction in admiralty, and even if Louisiana law gave a lien and this lien had not been waived as urged in the second contention, still the only remedy in admiralty is by a libel *in personam*, and not by a libel *in rem*.

Mr. Livingston appeared for appellees, libellants below, and opposed each of these three contentions. As to Mr. Mouton's point that the court below had no jurisdiction in admiralty, the solution of the problem hinged on whether there was an ebb and flow of tide in the Mississippi River at New Orleans. Under the then rather recent decision of the United States Supreme Court in the case of The Steamboat Thomas Jefferson (1825),[33] admiralty jurisdiction was limited to transactions and happenings on waters where the tides ebbed and flowed.[34] Applying the "ebb and flow of tides" test, the Court decided as a fact that, while the river current at New Orleans was strong enough not to be entirely checked by the tides, the water did rise and fall with the ebb and flow of tides so noticeably as to bring the case within the "ebb and flow" test and subject to admiralty jurisdiction.

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[33] *10 Wheat. 428; 6 L. Ed. 358.*

[34] The "ebb and flow of tides" rule is no longer the test as to the waters over which admiralty jurisdiction extends. The Genessee Chief v. Fitzhugh (1851), *12 How. 457; 13 L. Ed. 1064*, overrules The Steamboat Thomas Jefferson and all other decisions limiting the admiralty jurisdiction to tidewater, and asserts the broad doctrine that the principles of that jurisdiction as conferred on the Federal courts by the Constitution extend wherever ships float and navigation successfully aids commerce, internal or external. Thus "practical navigability" instead of "ebb and flow of tides" is the test as to the waters over which admiralty jurisdiction extends. The Hine v. Trevor (1867), *4 Wall. 555; 18 L. Ed. 451.*

As to Mr. Mouton's second contention, the Court decided that the Louisiana Civil Code, Art. 2748 (now Art. 2777), allowed the repair men a lien unless the ship left the port before the privilege lien was exercised, and that there was no waiver of said lien in this case.

Having decided that the case was within admiralty jurisdiction, and, although there was no lien by general maritime law for repairs on a domestic ship in her home port, the admiralty court could proceed under Louisiana law by a libel *in rem* to enforce a lien, which is an interest in the ship. The Court considered most of the awards for labor and materials fair and reasonable, though the item of two hundred and seventy-five dollars for hauling the ship out of the water was disallowed on a technicality.

The outcome of the case was therefore favorable to Mr. Livingston's contentions of law; and the case definitely settled that where admiralty has jurisdiction of a claim, but there is no lien by general admiralty law, a valid lien given by local state law can be enforced in admiralty by a proceeding *in rem*.

CHAPTER III

Codifier

Custom or conformity to the common law of other states: that was the question presented when Old World authority in New Orleans and Louisiana was replaced by the control and guarantees of the young American republic. All of the Spanish Partidas was still in force except the criminal provisions and those parts dealing with the Catholic religion,[35] and the French ordinances and customs of Paris still had a strong hold on the French-speaking people, although officially abolished by O'Reilly in 1769. Both systems owed a great deal to Roman law. But now the United States owned the territory, and many of those Americans coming from other states expected the common law inherited from England to follow the Constitution and rule out all these old practices.

The act for taking possession of Louisiana in 1803 merely instructs the president to direct the occupation of the newly-acquired cession, and in the second of the two sections declares that the civil,

[35]Moreau Lislet and Henry Carleton, *Translation of the Partidas*, p. xix of the Preface.

military, and judicial powers exercised under the former system should be distributed in such a way as the president should see fit. This preliminary statute thus left the fundamental law unchanged.[36]

Section 11 of the Act Creating the Territories of Orleans and Louisiana, 1804, on the face of it again left the law of the Territory of Orleans on a status quo basis, providing that "The laws in force in the same territory at the commencement of this act, and not inconsistent with the provisions thereof, shall continue in force until altered, modified, or repealed by the legislature."[37] The trouble came with the attempt by interested persons to read into the establishment of the trial by jury on request of either party in criminal cases, and the exercising of appellate jurisdiction by Federal courts in cases tried by state courts, the automatic establishment of the common law in the state. This line of reasoning had little real chance of success because of the people's ignorance of common law principles, but the old inhabitants bitterly resented the proposed move. Other provisions of the act insured the right of Habeas Corpus and the right to bail except for capital offenses where the proof was overwhelming, and prohibited cruel and unusual punishments.

Congress passed still another law in 1805 concerning the organization of the Territory of Orleans, and its provision about law was in almost the same wording as that of the year before.[38] In all three acts, therefore, the authorities at Washington had clearly shown themselves not inclined to interfere with matters so likely to rouse the volatile Louisianians to resentment, while at the same time leaving a wide loophole allowing change from within the colony if public sentiment should happen to swing in that direction.

A vigorous minority in New Orleans at the time would have asked nothing better than to wipe all the old regulations off the slate, and give the English law a chance. Newcomers demanded the protection of the common law in their business relations, while the "ancient" Louisianians watched suspiciously for any attempt to introduce these principles into general practice. A large number of lawyers from other states had descended upon New Orleans

[36] Francis Newton Thorpe, *American Charters, Constitutions, and Organic Laws*, III, p. 1364.
[37] *Ibid.*, p. 1368.
[38] *Ibid.*, p. 1372.

after the cession, and it was clearly to their advantage to introduce a system which they already understood and could put to use without further preparation.[39]

Livingston was never of this group and, in fact, was so actively opposed to the idea that he became one of the leading champions of the old civil law. After a few months of practice in his new surroundings, he undertook to simplify the procedure in civil cases, his code receiving the legislative approval on April 10, 1805. It consisted of twenty-two sections and covered only twenty-five pages. To illustrate the extreme simplicity of the code, Livingston told the story of a young lawyer from a common law state who wished to become acquainted with the routine of practice in the state so that he might be admitted to the bar. He wanted to enter Livingston's office while he was learning, and asked how long it would take him, with much diligence, to understand thoroughly the rules he had acquired with so much effort in his home state. His host replied that it was hard to name the exact hour, but that as they were to have dinner together at four the next day, he thought the mysteries of the practice might be rather fully revealed to him by that time.[40]

The formidable maze of laws under which the Territory of Orleans was governed was made even worse by a great many commercial customs peculiar to the country, and the unwritten decrees of local commandants which bobbed up from time to time. Some of the more important of these were made into law so as to remove the necessity for their tacit recognition by the courts.[41]

The desire to reduce the law of the Territory to a single system, simple and practical, was formed early by members of the legislature, and in 1805 Moreau Lislet was commissioned to attempt the task. His Digest of Civil Laws, based on the Code of Napoleon, was adopted on March 31, 1808, following some warm arguments against such a course by those members favoring English law, and some equally strong reasoning for its adoption from its supporters. Governor Claiborne thought the Digest on the whole a real contribution for clarifying the law, although he would have wished to see common law doctrine stronger in it. He recognized, however, that innovation must come slowly and as conditions permitted.[42]

[39]James Alexander Robertson, *Louisiana under the Rule of Spain, France, and the United States*, II, p. 118.
[40]Hunt, *op. cit.*, p. 118, quoting from a letter written by Livingston to Jeremy Bentham, printed in Bentham's *Works*.
[41]Robertson, *op. cit.*, II, p. 361.
[42]Charles Gayarré, *History of Louisiana*, IV, p. 195.

The chief trouble with the Code of 1808 was that it did not repeal the great mass of French and Spanish law which had been in force, but only those parts that were in conflict with its provisions. Thus, it did not fully meet the need, and could only be considered a stopgap until a more complete work could be projected.

Neither the Enabling Act of 1811 nor the Act for the Admission of Louisiana of 1812 mentions what law the neophyte state should apply, and after this bit of self-denial, the matter passed beyond the control of other than state authority. The state Constitution of 1812 in section 4 of the Schedule carries over from the acts of 1804 and 1805 the same spirit of "let well enough alone," for here again we find that "All laws now in force in this territory, not inconsistent with this constiution, shall continue and remain in full effect until repealed by the legislature."[43]

The first step leading to the writing of a code complete in itself was the provision for the translation into both French and English of the Partidas, or Spanish law in seven parts. The translators were Moreau Lislet and Henry Carleton; they had already begun work when an act was passed by the state legislature on March 3, 1819, providing for the examination and distribution of the translation when finished. A committee of three members, composed of Pierre Derbigny, Edward Livingston, and Etienne Mazureau, the attorney-general, was to certify that the work was faithfully and accurately done and contained all parts of the Partidas as had the force of law in Louisiana. Five hundred two-volume sets should be delivered to the state within eighteen months, while the state agreed to pay each translator three thousand, five hundred dollars.[44]

Two postponements of the date for delivery of the five hundred copies were provided by statute, the first for six months and the other about five weeks.[45] The legislators probably decided an added incentive to finish might be welcome, for each translator was to receive five hundred dollars upon presenting to the governor a certificate of acceptance from the examining committee. A later act named the number of copies to go to each of the state offices, the remainder to be sold by the state treasurer at not less than ten dollars a set.[46]

[43]Thorpe, *op. cit.*, III, p. 1389.
[44]*Acts of 1816-17-19 of Louisiana*, pp. 44-46.
[45]*Acts of 1820*, p. 20; *Acts of 1821*, p. 22.
[46]*Acts of 1822*, p. 20.

This necessary preliminary over, the legislature passed a resolution on March 14, 1822, that "three jurisconsults be appointed by joint ballot of both houses of the general assembly of this state, to revise the civil code by amending the same in such a manner as they will deem it advisable, and by adding under each book, title, and chapter of said work, such of the laws as are still in force and not included therein, in order that the whole be submitted to the legislature at its first session, or as soon as the said work has been completed."[47] There was to be included a complete system of commercial laws and the rules of civil actions and practice followed by the courts. The sum of a thousand dollars was to be paid each of the three out of any money in the treasury not already appropriated. The three "jurisconsults" elected as provided were Livingston, Pierre Derbigny, and Moreau Lislet.

A week later a similar resolution was passed approving Livingston's plan of a criminal code, which means that for the next three years he was working concurrently on both codes, besides holding up his law practice and going to Congress for three more terms from his adopted state. He evidently had already written some of it, for provision is made that "the part of the projected code hereto annexed" and what remained to be written were to have two thousand copies printed at state expense, a thousand in English and the rest in French. Most of these were to be distributed to members of the assembly and all the state judges and district attorneys, with two hundred reserved for the author. To bind the agreement, an advance of a thousand dollars was given Livingston on the compensation allowed for the finished piece of work.[48]

Apparently work on the Civil Code was pushed forward satisfactorily though slowly for almost a year; then on February 13, 1823, a most illuminating report was made to the state legislature on the progress already made. The commissioners began by recognizing it as their duty to remove the necessity of looking for the state's laws in "an undigested mass of ancient edicts and statutes, decisions imperfectly recorded, and the contradictory opinions of jurists; the whole rendered more obscure by the heavy attempts of commentators to explain them; an evil magnified by the circumstance that many of these laws must be studied in languages not generally understood by the people, who are governed by their

[47] *Acts of 1822*, p. 108.

[48] *Acts of 1822*, pp. 108-110. The laws are printed in both English and French, the English version on the left page. Thus, page 109 is here given to the French of the act.

provisions." It is admitted that the idea of attempting to provide for every case that might arise was "chimerical," while also changing conditions would make some provisions obsolete and bring others into being."

This necessity of providing some means of caring for unforseen cases was therefore presented squarely before the members of the two houses. Should the pre-existing laws be left in effect to cover them whenever possible? But this was exactly what they were trying to get away from. A brief dip into history showed that other states adopting comprehensive digests resorted to various devices. Under Roman rule, such cases were referred to the emperor; Spain sent new cases to the king in council; the Napoleonic Code also attempted to prevent dependence on old laws, but, like the Spanish Partidas, it did not close the door on old decisions on subjects not expressly provided for.

In the Louisiana Code, its framers wished to define fully the rights of individuals in their personal relations to each other, using as material the laws of the Partidas, other statutes of Spain, the existing digest of Louisiana law, the Code of France, and the great storehouse of English jurisprudence. Rules incorporated into the system were to differ from those already in use only when some inconsistency or inconvenience made it necessary, and then the principles chosen were to be in accordance with the spirit of the rest of the work and of such a character as to be equally durable. Where written laws were to be used, decisions under each act would be considered to find out how it worked.

With this basis established, the reporting jurists were still faced by the problem of what authority should dispose of cases coming outside of its provisions, even after all their care. Here there comes a passage that must certainly have come from the pen of Edward Livingston, whether the rest of the document did or not, for in several places throughout his legal writings he attacks the principle of judicial construction of the law, whereby a judge makes the rule under which a case is judged, although carefully keeping from mentioning that he is doing so. He says that magistrates shouldn't legislate any more than the legislature should judge, and if judges are to avoid settling civil suits by rules selected

[19] *Report on the Civil Code to the Louisiana General Assembly.* A crumbling, timeworn, and rather valuable copy of this thin volume was acquired several years ago by the L. S. U. library, and several typewritten transcriptions made for those interested in this sort of thing. One of these was used here.

by themselves, a code ought to provide specifically for most cases, and present a source for new rules where the code didn't apply.

In such emergencies, the commission recommended that the judge apply the principles of equity in that particular case, but his decision should not hold the force of precedent. Instead, the legislature was to be informed of the fresh set of circumstances in order that a new law could be passed on the subject. Regular reports by the judiciary would keep the legislative body informed on how well the civil law was working, and thus enable it to supply any deficiencies and bolster up the weak places.

A practical suggestion is volunteered for handling those books completed at the time of the next legislative session. If provision were made for the printing of enough copies to supply members of the assembly with them, much closer attention could be given for weeding out errors, with each member having the right to propose alterations, whether of repeal or amendment, together with his reasons. After all details had been disposed of, the whole work was to be submitted for a vote by the legislature.

In one of the concluding paragraphs we find a clear statement of what Livingston considered the functions of the two codes on which he was then laboring. The commissioners expressed a desire that the code might be made practical and "by our joint labors, corrected and improved by the wisdom of the legislature, to furnish our fellow citizens with a single book, in which each may find an intelligible and concise rule to ascertain his rights, direct him in his duties, regulate his contracts, explain his civil relations, and guide him in his applications for justice, while the other work,[50] to which we have alluded, unconnected with this, will complete the system, and show him what acts are offenses, and what penalty is attached to their commission." At the end of the report are the names: Edw. Livingston, Moreau Lislet, and P. Derbigny.

The legislators gave the report prompt attention, and a month later, on March 20, 1825, promulgated the amendments and distributed them to each of the courts of the state. A month later the Code itself was promulgated. An act of March 14, 1826, further ordered the secretary of state to deliver copies of the Code to every sheriff in the state and to the marshal of the city of New Orleans, who were to turn them over to their successors on going out of office.[51]

[50] i. e., the Criminal Code.
[51] *Acts of 1823*, p. 88.

Amendments to the Civil Code were fairly frequent during the next several sessions of the legislature. Most articles amended or repealed dealt in details, such as the number of registers kept by the recorder of mortgages in New Orleans,[52] though others were more important, such as the one confirming the right of a witness who was a member of a corporation, civil or religious, to testify in a case concerning the corporation, provided it wasn't a particular interest.[53] The last stroke cutting off the remote past in civil law is seen in the act of March 12, 1828, stating that to settle the question of whether such provisions in the Code of 1808 not mentioned in that of 1825 were still in force, all such provisions were thereby repealed, except the third chapter of the tenth title dealing with the dissolution of communities or corporations.[54]

The Code of Practice was subjected to a similar intensive amending and repealing process. At the end of more than twenty-five such sections adopted in 1828, the Code of Practice was declared to have the force of law regardless of the fact that when sent to the courts after being accepted in 1825, the words "Be it enacted" were omitted, as were also the date and names of the president of the Senate, speaker of the House of Representatives, and governor.[55] The article in this code ordering a judge to take security when issuing an injunction was repealed;[56] another was amended to release sheriffs from announcing in the papers the sale of property seized when the amount was less than three hundred dollars;[57] and to supplement another provision an affidavit mentioned in a certain article could be either written at the foot of a plaintiff's petition or attached to it.[58]

The Civil Code of 1825 has not since been allowed to get out of touch with the changing times, but all the subsequent revisions and annotations are based primarily upon that work. In 1870, it was fully revised and re-enacted, this Code of 1870 being the one in present use. An 1838 edition was annotated by Upton and Jennings, another in the '80's was undertaken by Judge Eugene D. Sanders, and E. T. Merrick brought the annotations and amendments down to 1912. Other prominent lawyers of the state, such as Thomas Gibbes Morgan, have contributed toward keeping the

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[52] *Acts of 1826*, pp. 162-164.
[53] *Acts of 1828*, p. 12.
[54] *Ibid.*, p. 66.
[55] *Acts of 1828*, p. 160.
[56] *Ibid.*, p. 150.
[57] *Ibid.*, p. 50.
[58] *Ibid.*, p. 150.

Louisiana Civil Code up to date,[59] and the most recent edition is that of 1932, made under the direction of Benjamin Wall Dart.

The Louisiana legislature never acted upon Livingston's Criminal Code, and as a result its interest is more humanitarian than historical. Perhaps if its author had been in the state to force attention from the lawmakers, he might possibly have been able to overcome the conservatism which caused them to pass over a work so far in advance of the time as to be almost radical. For instance, abolishment of capital punishment is even nowadays considered something of a reformer's daydream—over a hundred years after Livingston substituted solitary confinement on the plainest fare.

As early as 1814 Governor Claiborne complained to the legislature about the tangle of penal jurisprudence, composed as it was of the common law, statutory law, and the varied offspring of the Roman law used by the French and Spanish nations. Already, he said, there were so many acts amendatory and supplementary to former acts that research was made extremely difficult. With excitement high over the English invasion, however, nothing was done about it at the time.[60]

Edward Livingston was admirably fitted both by temperament and training for such a task. At school he had liked philosophy as well as law, and while mayor of New York had proposed a scheme to the Mechanic Society whereby the government and that organization should jointly operate public workshops to employ people out of work, discharged convicts, new arrivals to the country, etc. This attempt to strike at crime at one source—want of the bare necessities of life—came to nothing, but it did show the channel his mind was running in. Much of his reading had been from Montesquieu, Bentham, and other social reformers, and when once definitely started on his work, he sent requests to governors of other states, heads of penitentiaries, American ministers abroad, and prominent men of all countries. The results were not especially encouraging, but what answers did come back received careful consideration.

Not long after the resolution approving the plan of a code was passed by the assembly, Livingston was nominated for member of the national House of Representatives from New Orleans, and as

[59]Judge T. C. W. Ellis, "The Louisiana Bar, 1813-1913," *Louisiana Historical Quarterly*, IV, (1921) pp. 81-106.
[60]Gayarré, *op. cit.*, IV, pp. 310-311.

no other candidate came upon the scene, his election was unanimous in July, 1822. When he left the state to attend the session beginning in December, 1823, Livingston was never again a resident of Louisiana, though representing it in Washington during the rest of the decade. Following the two re-elections, he was defeated the third time, but the legislature then elected him to the United States Senate, where he stayed only a few months before becoming Jackson's secretary of state when Van Buren resigned.[61]

During the recess of Congress beginning in May, 1824, Livingston moved with his wife and daughter to 66 Broadway to put the finishing touches on his beloved Criminal Code. Here a calamity occurred which probably would have caused a man less used to misfortune to abandon his project. All of the completed Code, except a few pages at the printer's and some notes, was destroyed by fire! At one o'clock on November 14, he laid aside his finished Codes and Punishments, Criminal Procedure, Prison Discipline, and Evidence, with the feeling of a hard job well done. Three hours later he woke to find that a fire in the writing room had destroyed all of the manuscript except fifty or sixty pages then being printed.

That same day he started again, with the aid of some imperfect notes not burned. A few days later he wrote to his friend Du Ponceau in Philadelphia, thanking him for some books sent for the second writing. He found that his recollection grew stronger as he went along, and hoped to keep ahead of the printer, as he had done so far. In two years the Livingston Code was finished again and ready for the Louisiana legislature to pass judgment upon.

Perhaps partly due to the author's absence, but more to the pronounced advanced tone of the work itself, the legislature evidently decided that Louisiana could get along without a code, allowing its option on Livingston's masterpiece to lapse. Meanwhile, its writer had been revising his system of criminal law with the purpose of meeting the needs of the Federal government. During his first session as senator he moved on March 3, 1831, for leave to introduce his bill pointing toward such a use, which was granted. The Code was printed at state expense for consideration at the next session, but by that time Livingston was no longer in Congress, and the subject was never brought up again.

[61]The rest of this chapter is taken from Hunt, *op. cit.*, chapters 13 and 14.

The reputation of the Criminal Code was international a short time after its publication. The author immediately received congratulations from several of his old New York and Washington associates—Kent, Story, Marshall, and Madison. The English publication under the editorship of Dr. Southwood Smith received flattering notices in the London papers, and Livingston's friend Jeremy Bentham proposed that a measure be introduced into Parliament to print the whole work for English use. The French translation was made by M. Jules Davezac, an uncle of Mrs. Livingand president of the College of New Orleans; an interesting point about this was that the translator could not speak English at all, but had learned it as one acquires a dead language, being able to transfer perfectly the meaning from one tongue to the other. When Victor Hugo read these volumes classifying crime, he recognized a weapon for combatting some of the conditions pictured in "Les Miserables," and wrote to Livingston, "You will be numbered among the men of this age who have deserved most and best of mankind." Among the others adding their praise were the Emperor of Russia and the King of Sweden.

CHAPTER IV

The Codes as Human Documents

Livingston made no great claim of originality for his contributions to these projects. Rather, it was just the opposite! He and his colleagues working on the Civil Code were admittedly merely sifting over the laws which they found and picking out what they thought practicable for the Louisiana of their day. In a similar fashion, his Criminal Code was written only after he had received all available information on the subject, whether from books, letters, or first-hand investigation.

The Louisiana Civil Code, as a living work continually undergoing change when conditions require it, belongs to the field of a legal commentator, rather than to one interested in the past. One problem dealt with in it, however, which has since been removed at least theoretically by amendments to the Federal Constitution, was the legal status of negro slaves. The general provisions are much like those of other Southern states: the slave was entirely incapable of exercising any powers of public office or private trust,

or being a party to any civil action except when he had to claim or prove his freedom;[62] he was incapable of inheriting;[63] he was in every way subject to the will of his master;[64] masters were answerable for the acts of their slaves;[65] etc. The difference was in the restrictions on slave owners.

In a most sweeping denunciation of all slavery laws, published in 1856, almost the only qualifying words of praise which the author allows himself to write are the following:[66]

> . . . While treating on the subject of emancipation, with reference to the laws of Louisiana, it is due to the framers of the new Civil Code as well as to the legislature and people by whom it has been adopted, to notice distinctly several provisions in this code, which evidence greater benevolence to the slave than is usually exhibited in slave-holding countries.

One of these was that a slave who was to be freed at some specific time should be able to acquire property, which would be administered by a curator until the time of his emancipation.[67] Another lenient provision was that if a master allowed a slave to enjoy his freedom for ten years when a resident of the state, or twenty years when not, he lost all rights of possession in him unless the slave was a runaway or a fugitive.[68] Probably the most unusual article of all was the one saying that slaves, "though moveables by their natures, are considered as immovables, by the operation of the law," thus preventing their legal removal from the land they worked.[69]

Of course, this part of the Civil Code became obsolete with the adoption of the Thirteenth, Fourteenth, and Fifteenth Amendments.

It doesn't take long for anyone reading parts of Livingston's criminal group to discover that the man who wrote them was no Utopian or short-sighted reformer. He recognized plenty of obstacles and tried to overcome them, stating in the introductions his

[62] *Civil Code of Louisiana*, Art. 177.
[63] *Ibid.*, Art. 945.
[64] *Ibid.*, Art. 945.
[65] *Ibid.*, Art. 179-180.
[66] George M. Stroud, *A Sketch of Laws Relating to Slavery*, p. 246.
[67] *Civil Code, op. cit.*, Art. 193.
[68] *Ibid.*, Art. 3510.
[69] *Ibid.*, Art. 461.

reasons for acting as he did. As a matter of fact, his report on unsavory prison conditions and the reclaiming of child criminals carries in it quite a modern ring, sounding much like the similar findings of various contemporary committees. While striving always for improvement, Livingston realized that such conditions couldn't be changed all at once, especially where expense was involved, and attempted to fit his plans as far as possible to human limitations. Some of the problems he faced then are interesting to us today, and well worthy of study by those interested in either the legal or social aspects of criminal law. Without trying to go into detail, we might consider several of these points.

The Code of Crimes and Punishments "enumerates, classes, and defines all offenses."[70]

As before suggested, the outstanding innovation sponsored by Livingston was the abolition of capital punishment. He admitted freely that if death for the offender was the only way to protect the decent element of society from the repetition of capital crimes, then it was the thing to use. His contention, on the other hand, was that it was an ineffective method, both as punishment for the individual and a means of reforming him, and as an example to keep others from doing the same thing. He recommended solitary confinement on the plainest fare, to serve as an example for other would-be criminals and to give the individual a chance to think over his sins, for the reasons mentioned below.

A person about to commit a major offense is likely to think little of the consequences, and besides, he never expects to be caught. He takes his gamble with the remote change of death as the losing throw, and the motives impelling him on are usually of the strongest kind that don't allow thought of failure. Fear of death acts as a preventive to crime less than one would suppose; perpetual imprisonment to someone with such ambitions would be almost unbearable and far more effective as a restraint.

A second consideration is that if the accused person's innocence is discovered after his execution, nothing can be done for the prisoner himself to right the wrong. Such cases are rare, to be sure, but each remains a blot on public justice.

[70]Edward Livingston, *Works of Edward Livingston*, p. 24. This *Works* in two volumes refers only to his writings on criminal law, the first including the introductory reports for his codes, and the second the codes themselves. This preliminary discussion was written long before the completed work was ready, to inform the Louisiana legislature as to his general plan of attack on criminal jurisprudence. Later reports served as introductions to each of the four books. These discussions will be used as material for viewing briefly something of what Livingston had to decide.

Reformation and reclamation of the condemned man have almost no part in the scheme of capital punishment. A person, as likely as not in perfect health and having every chance for a long and useful life, has the hour set for his death, without regard to the potential services he might even yet render to humanity. No differentiation beyond the question of guilt of that particular crime is made between the hardened criminal who could never be anything else, and a brilliant youth who lost control of himself temporarily and committed a first-degree murder. Imprisonment, on the other hand, might bring out something worthwhile in such a person.

Another thing which the author noted even in those days was the feverish public interest in trials for which death was the penalty. This might work either to secure the release of a young man guilty of the crime, but whose youth aroused prejudice in his favor; or, worse yet, to have an unfair judgment forced by public resentment against the prisoner. With death abolished as the penalty, much of this interest would surely die out, and justice could be given without too much outside influence. The tendency to magnify a murderer as a hero might be reduced, and the facts seen in their true light with the artificial excitement removed.

As to the other forms of punishment, Livingston first considered those used at one time or another in the past. These he reduced to banishment, deportation, imprisonment in chains, confiscation of property, exposure to public derision, labor on public works, mutilation and other indelible marks of disgrace, stripes or the infliction of other bodily pain, death, and simple imprisonment.

He wanted to abolish most of these and substitute a graduated system of imprisonment and revoking of rights. His own scale of punishments included pecuniary fines, degradation from office, simple imprisonment, temporary suspension of civil rights, permanent deprivation of civil rights, imprisonment at hard labor, and solitary confinement during certain intervals of the time of imprisonment, to be determined in the sentence.

The Code of Procedure "is intended to give rules of practice in all criminal proceedings."[71]

One of the things the author considered of primary importance in this connection was the compulsory trial by jury in criminal cases. This cornerstone of English liberty had formerly been

[71] *Ibid.*, p. 61.

optional in Louisiana, because of the French influence there. He made this move because of the danger of having the people become accustomed to criminal trials wherein their fate rested in the hands of a single man, the judge. To prevent such a condition, the invariable use of the jury was the remedy, and those serving on the jury would also get the benefit of a limited experience in law. To serve as a juror would thus be to attend a school of practical law.

In the Code of Evidence "general principles will be laid down, applicable to all cases of criminal inquiry, from its incipient to its final stage."[72]

After dividing the kinds of evidence into three classes—presumptive, direct, and conclusive—the writer considers the special interest which according to both civil and criminal law would disqualify a witness. By his code, special interest by a witness would be taken into account though not disqualify altogether but at the same time he tried to guard against the evils which might accompany the securing of such evidence. This last would have to be weighed against evidence from interested persons, but on the other hand there were those obvious cases where the cause of justice demanded that such evidence be heard. He thought it should, and so provided.

The Code of Reform and Prison Discipline "is to contain rules for the establishment and government of the public prisons; comprehending those intended for detention previous to trial, for simple confinement, and for correctional imprisonment at hard labor, or in solitude."[73]

One can easily understand why the American Prison Association endorsed Livingston's work on crime, and especially this particular code. The author first considers the best means of confinement and, if possible, reclaiming of those who have run afoul of the law. After studying the various prison systems, he passes them in review; crowded jails full of unemployed prisoners, convicts used on public works in gangs, employed inmates who work in gangs behind the walls but are not allowed to say a single word, solitary confinement with or without employment, etc. He decides that the best system, if not too expensive, is solitary confinement, with employment given as an inducement to good behavior and taken away when justified. In this way the schools of crime

[72] *Ibid.*, p. 71.
[73] *Ibid.*, p. 72.

which most prisons offered might be reduced to a minimum, and a prisoner needn't be any worse when he left than when he came there.

Like many investigators of the present day, he was frankly shocked at what he found at the reform schools, but even there, where the youthful gangsters of the nineteenth century received their training, he saw cheering elements. Definite progress was being made toward segregating the children and surrounding them with a more healthful environment as an incentive to become law-abiding citizens.

One of Livingston's public institution projects was admittedly idealistic. This was the suggested house of industry and refuge, intended to give work to the unemployed under government supervision and living wages, and as a home for the extremely poor unable to work. It was in no sense to be a place of punishment, though indigent transients, or "hoboes," might be forced to work there, in order to remove the temptation of getting a living in some other way.

The first book in position—and the last in order of composition—contains an outline of the other books in subdivisions of chapters and sections. This makes citations comparatively easy to find.

One of Livingston's chief aims in codifying criminal law was to write the subject so accurately and yet in such non-technical language that the average layman could understand it.[74] His ambition was constructive; he wanted very much to spread a knowledge of the law and prevent infractions of it. His attention was given as much to the prevention of crime and the building up of a correct mental attitude toward the law in the people, perhaps, as to running down the criminal and giving him his just desserts after crime had been committed.

CHAPTER V

The Batture Controversy

Along the lower Mississippi, alluvial land which is built up by the river inside the levee is known as batture. One of the most depressing chapters in Livingston's life is connected with his "flier"

[74]To do this he would submit parts already finished to his friends, asking them to mark words they didn't understand without a dictionary. These words he then caused to be printed in italics, to be explained in the glossary.

in this type of real estate, along the Faubourg (Suburb) Ste. Marie, below New Orleans and opposite Fort St. Louis. Instead of discharging all his debts by this one masterly stroke, as he'd hoped, he eventually found himself stripped of his earnings of four years in exile, absolutely helpless to do anything about it; and plunged desperately into a pamphlet warfare and series of lawsuits to obtain a hearing that took his best efforts for many years. The chief opponent was Thomas Jefferson, who while president had ordered the Federal marshal to seize the batture for the United States, and ever afterward used his enormous influence to checkmate any attempts of the dispossessed owner to bring about a hearing. An individual, of course, cannot sue the United States without the consent of Congress, and for session after session Livingston went to Washington to ask for legislation permitting some sort of review of the facts leading to the restoration of his property. But all in vain. Each time, when success seemed near, something happened to snatch it away, and the disillusioned but not discouraged old man was left only the resort of giving his side of the case to the public. Even this was done under the handicap of the public disbelief that Jefferson could ever have done such a thing as to dispossess a citizen of his property without due process of law. The fight was almost hopeless, but Livingston kept on protesting, and in the end his heirs got something.

The land to which the Batture Ste. Marie was attached formed part of a grant made in 1726 to the Society of Jesus. It was twenty arpents[75] fronting on the Mississippi, by fifty deep, and was enlarged twelve more arpents in front by later purchases. The order was suppressed in France in 1763, one consequence being that this piece of land was then divided into six lots and sold. As a legal preliminary to the sale, the proces verbal, or record of official proceedings, was begun July 14, 1763, with orders from Mr. Dabaddie, governor of the province, and Olivier Devezin, surveyor general of the province, as to what property there was to be sold.[76]

There were six purchasers. Among them was a lieutenant in the navy, commanding the king's ship Solomon, a Mr. Pradelle, who received the lot of seven arpents by fifty bordering on the fortifications. All those buying were ordered to be present at the surveying, which proceeded in this manner:[77]

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[75] An arpent is sixty-four yards.

[76] *Livingston's Batture*, "Report: John Gravier v. The Mayor, Aldermen, and Inhabitants of the City of New Orleans," p. 4.

[77] *Ibid.*, p. 7.

1. To show the direction of the lateral line next to the city, by placing there stakes at an arbitrary distance from each other, in the direction of the line.

2. To lay off a line, on which the front might be measured, for which purpose he says on the lateral line, "at the point D, we replaced our instrument at six toises below the point A, *to find with precision the front of these lands on the river St. Louis,* the distribution of which could not take place according to the first plan, which obliged us to make a new one, always, however, referring to those mentioned in our proces verbal of the 22d of July last, by two right lines of direction (lignes de conduite) *along* the river.

This at least implies that the line should run to the water's edge. The certificate of sale was then validated by the signature of a number of royal officers, La Freniere approving it in these words:

I require in the name of the king, that the present proces verbal should be homologated; that it may have its full and entire effect; that the decree which may be pronounced may serve as letters of possession irrevocable and incontestable to the purchasers of the six lots of the land belonging to the former company of Jesuits. New Orleans, 24th April, 1764.

The validity of the seizure and sale of this land was never questioned. At the same time, however, it must be remembered that Louisiana had already been ceded secretly to Spain, although the transfer did not take place officially until 1769. Thus, while the acts of the de facto French government in this interval were recognized as legal, Livingston pointed out more than once that the Spanish law of alluvion applied to the sale of the Jesuit lands more surely than the French customs of Paris, upon which the national claims were based.[78]

The second documentary link in the chain of this piece of land's history was the deed by which Alexandrina de la Chaise, widow of Jean Pradelle, made the transferral to Andre Renard on June 11, 1773.[79] The third was the will of Renard, dated May 29, 1782, by which he left all his estate to his wife, Maria Josepha Deslonde, when he died August 6, 1785.[80] Madame Renard then married Bertrand Gravier, leaving to him all her property by her will

[78]Edward Livingston, *Examination of the Title of the United States to the Land Called the Batture*, p. 15.
[79]*Gravier v. New Orleans, op. cit.*, p. 9.
[80]*Ibid.*, p. 9.

dated November 18, 1792. It appears she died the same day, and after the usual mortuary proceedings, the governor ordered the will to be executed, according to the usual legal forms.[51]

Gravier realized the value of land so close to the city, and as early as 1788 he acted for his wife in laying off the land facing the road running beside the levee into four ranges of lots.[52] He added more in 1796, and the Fauxbourg Ste. Marie was created. The grants were made in different terms: in a few the batture was expressly granted, while the others used the Spanish expression, "haciendo frente a la levee de este rio," which puts the boundary at the levee. Livingston bought the batture of the owners of the first group, for ten thousand, seven hundred dollars, besides what land he secured from John Gravier.[53]

Bertrand Gravier died intestate in 1797. The thirteen acres of land were inventoried and appraised at two thousand, four hundred, and seventy dollars; all of the effects, real estate, moveables, and slaves, which had been inventoried, going to John Gravier at the estimated price. This restricting provision is important, because a question later arose as to whether the batture was included in the inventory, for if not, this property would be divided equally with Bertrand Gravier's other brothers and sisters living in France.[54]

It was some time after taking over his plantation and all it included that John Gravier became personally interested in the batture. Jefferson afterward claimed that it was only after Livingston came that he got the idea that the batture was his own private property, but this is only partly true. In 1808, a certain John Lewis Laurent, a citizen of New Orleans, declared before a justice of the peace that Gravier had begun to reclaim with a levee a piece of batture four hundred feet square, late in 1803 or early in 1804. The levee was finished that winter, and was still visible at the time of the deposition.[55]

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[51] *Ibid.*, p. 9.

[52] Thomas Jefferson, *The Proceedings of the Government of the United States, in Maintaining the Public Right to the Beach of the Mississippi, Adjacent to New Orleans, Against the Intrusion of Edward Livingston*, p. 2.

[53] Edward Livingston, *An Answer to Mr. Jefferson's Justification in His Conduct in the Case of the New Orleans Batture*, p. 124. These two works are bound together under the title, *New Orleans Batture*. All of the other documents, arguments, and bits of miscellaneous information quoted are bound together in *Livingston's Batture*, with no consecutive numbering system at all. Both books are rare and expensive, and are kept in the Louisiana collection of the L. S. U. library. Thanks to Mr. McMillen, the librarian, they were borrowed long enough to get this information.

[54] *Gravier v. New Orleans*, *op. cit.*, pp. 10-11.

[55] *Livingston's Batture*, "Notes," p. xxxviii.

It must be remembered that for about a hundred and fifty miles from the mouth of the Mississippi, the river flows through land built up from the sea. The water level is usually several feet above the bordering prairies and swamps, making it necessary to build dykes or levees about nine feet or more high. Flowing as it does through a light soil, the Mississippi often changes its bed, encroaching on one bank and then dropping the soil where the water is stagnant, usually behind some protecting point. This alluvion is increased by successive floods until eventually it rises about as high as the natural banks, above the ordinary water level and perhaps five or six feet below flood level. At this time, the owner of the adjacent property could if he wanted raise another levee to protect this newly-formed plot of ground from inundation, and add it to his plantation. The road was then generally moved, and the old levee and road allowed to deteriorate in their own way. According to Mr. Livingston, this process was rather common along the Mississippi, happening once at the Suburb Ste. Marie in 1756, when the 1726 levee was moved. He therefore contended that building a new levee and appropriating the batture by the adjacent owner was a natural move, adding that these works would not quicken or impede the gathering of alluvion so long as they did not project past the point which caused the eddy to drop the soil.[86]

The passing of Louisiana to the United States in December, 1803, was certain to make this waterfront extremely valuable because of the increased trade, and Livingston saw in this his chance to wipe out all old debts; the debt to the Federal government, it might be mentioned here in passing, being paid in full with some city property before he left Louisiana. Soon after reaching New Orleans an examination of Gravier's title convinced him that the batture went with the estate unless granted to lot-holders. Before any improvements were begun, suit was brought against the city to quiet Gravier's right to the batture, an action which was most unpopular because of the uses to which the batture had been put. Anyone in the city could use it in any way that he wished for getting dirt, stacking goods on the bank, landing boats, or transporting merchandise, all without cost. Naturally there was quite a protest when it was suggested that these rights be taken away, and the advantage of public opinion was certainly in favor of the corporation as defendant.[87]

[86]Livingston, *Answer to Jefferson, op. cit.*, pp. 118-119.
[87]Jefferson, *op. cit.*, p. 12.

The case came to trial on December 18, 1806, before Judge Prevost, then the only judge on the Supreme Court bench; he refused to allow citizens of the city to testify, as having a special interest, although the plaintiff offered to waive all exception.[88] The case was not decided then, but postponed until May 2, when the bench was filled by Judges Sprigg, Mathews, and Lewis. Livingston was, of course, chief counsel for the plaintiff, and for the defense there were Moreau Lislet and Pierre Derbigny to bear the chief load. This time corporators were allowed as witnesses, but since it was clearly impossible to use them as jurors, the defense lawyers did not avail themselves of the right to demand a trial by jury.[89]

The plaintiff's case was opened by producing the documents tracing the history of the estate from the Jesuits to John Gravier. Then were presented the grounds on which he relied for believing the batture to be his, as follows:[90]

> 1st—On the admission contained in the answer, that Bertrand Gravier was possessed of the land, since they make title under his abandonment.
>
> 2d—On the conveyance made by Bertrand Gravier of several lots of this batture, by public acts passed before the secretary of the Cabildo. (Pedesclaux) . . .
>
> 3d—On oral testimony which proved that John Gravier, in the year 1803, had begun the enclosure of a parcel about 500 feet square, which he completed in the following year.
>
> 4th—On a letter dated the 10th March, 1794, from the Baron de Carondelet, directing Mr. B. Gravier to make the levee on this plantation, and on the oral testimony showing that the Baron de Carondelet had applied to Bertrand Gravier, and Governor Gayoso to John Gravier, for leave was given, and the masts placed there in consequence thereof, for a considerable time at each period.
>
> 5th—On the constructive possession arising from this alluvion being part of the original plantation, and for this purpose they cited the authorities which will be found in the subsequent part of the argument.

The defendant then presented reasons why the disputed land did not belong to Gravier. The argument was based on these premises:[91]

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[88] *Gravier v. New Orleans, op. cit.*, p. 3.
[89] *Livingston's Batture*, "General Note," p. 1.
[90] *Gravier v. New Orleans, op. cit.*, pp. 11-12.
[91] *Ibid.*, p. 12.

I. That Bertrand Gravier had never had a title to the batture.
II. That John Gravier could not claim the batture under the inventory, appraisement, and adjudication of Bertrand's property.
III. That the city had a title to the land—
1st—By the abandonment of Bertrand Gravier.
2d—By the operation of law when the suburb was laid out.
3d—By prescription as to the soil.
4th—That they had a prescriptive right, if not to the property of the soil, at least to a servitude or commonable right to use it for digging earth and storing lumber, etc.

With numerous quotations from the Partidas, Corpus Juris, and other learned works, the Court gave its opinion, taking away entirely the city's claim to the disputed land, and quieting the plaintiff in his possession. There are five points to the decision, which may be reduced to these briefs: the bed of a river is common property, and though banks may belong to individuals, anyone can land and deposit his goods there; the mere flooding of water over land for a time does not disturb private ownership; rivers are continually giving and taking land, and where the taking is gradual, the land goes to the owner of the property on which it falls, but where taken off a great deal at a time, it still belongs to the original owner; a dried river bed belongs to adjacent property-owners in proportion to their frontage; those into whose land the river makes inroads lose their land when it becomes a river-bed, making it public property. The opinion of the Supreme Court was unanimous."[92]

With the city's claims disposed of, Livingston, with Peter de la Bigarre, went ahead and spent sums amounting to $77,000 in enlarging his batture holdings."[93] Other money went into improving the land, which included building a new levee, digging a canal, and constructing a house. These works were not finished at the time of the seizure by the Federal government, causing the levees to be practically worthless when the spring flood came along several weeks later. All the works were allowed to fall into decay, although the canal continued in use as it was until blocked at the mouth by sediment. Later on, Livingston secured an affidavit from a number of sea captains, to the effect that his canal providing landing-space out of the river current was a boon to ships, and probably not at all dangerous to the city."[94]

[92] *Ibid.*, p. 43.
[93] *Livingston's Batture*, "General Note," p. xlvi.
[94] *Ibid.*, "Notes," p. xl.

Governor William C. C. Claiborne wrote to President Jefferson on September 3, 1807, explaining the situation. He reported that a group of negro workmen in Livingston's employ were driven from the batture by a considerable number of citizens. Livingston went in person the next day, but the crowd still prevented further work. The Governor looked for more trouble ahead, and *"perhaps much bloodshed,"* and gave his opinion that the title was in the United States. The old fear of flooding the city by reclaiming the batture was given as the cause of mob action, but it was probably the taking away of a free waterfront and source of dirt.[95]

For several days the people continued to gather at the scene of contention. On Monday, August 31, Livingston had recommenced his work, after having given notice he intended doing so. The work began about ten o'clock in the morning, but by four or five in the afternoon enough people had assembled to drive away his laborers again. He tried once more September 14, with two constables to guard his laborers. They were again driven off, the constables writing lists of names of several who were present, which the crowds seized and tore up. The next day Livingston wrote to the Governor, declaring that he intended putting his laborers to work again that day at twelve o'clock, and wouldn't be surprised at having the people "change the insolence of riot into the crime of murder."[96]

Claiborne went there and spoke to the crowd. One of them complained about the decision of the court, asking for a decision by Congress on the matter, with no work to be done meanwhile. The people asked Claiborne to recommend to the government an agent they might send to the President, to which he agreed. They then nominated a Colonel Macarty by acclamation, and left for their homes.

The Governor's repeated calls for some sort of action to preserve the peace of the city finally moved Jefferson to submit the matter to his cabinet, with a very strong recommendation that the members accept his view that the batture belonged to the United States. This was on the 27th of November, 1807, the attorney general having given his opinion a month earlier.[97] Another statement of opinion had been obtained from Pierre Derbigny, formerly counsel for the city in the earlier suit, who now transferred his

[95] Jefferson, *op. cit.*, p. 15.
[96] *Ibid.*, p. 16.
[97] *Livingston's Batture*, pp. xix-xx.

support of the city's claims to those of the United States. Meanwhile, Livingston had got wind of the government's interest in the batture, and wrote to the attorney general asking that he "would not *advise a suit*" until seeing the statement of the man in possession.[98] This statement was sent in two parcels, only the first of them reaching its destination. Before the second was ready, the President had directed Secretary of State Madison to issue a warrant removing the interloper from government ground. The foundation for this order was the Squatters' Act of 1807, which allowed the removal of individuals intruding on public lands, and those guilty of raising works injurious to public health. As Livingston pointed out, both of these are judicial questions, the first civil and the other criminal, and neither ought to be decided without a thorough investigation and trial. If, on the other hand, the government —or those operating it—could seize any property thought to belong to it, and a trial could be had only with its permission, there was no possible check to tyranny.[99]

Secretary Madison sent a letter of November 30th to the United States marshal in New Orleans, directing him to "remove immediately by the civil power any persons from the Batture Ste. Marie who had taken possession since the 3d of March."[100] At the same time the Secretary of War ordered the commanding officer at New Orleans to assist the Governor by force of arms, if necessary to carry out this object. When Marshal Dorgenoy (or D'Orgenoy) came to execute his order, he found Livingston's men improving the land. They stopped when he said, but returned later. Livingston then obtained an injunction from the Superior Court of the Territory of Orleans, ordering that any further interference with the works would be contempt of court.[101] The warning was disregarded by the Marshal, who preferred to obey his chief, the President, and removed Mr. Livingston from the property. At this point the batture ceased to be physically a scene of contention, and the war of words began.

Already reference has been made to various writings pro and con on the batture controversy. Without trying to go into detail,

[98] *Ibid.*, pp. xxi-xxii.
[99] Livingston, *Answer to Jefferson, op. cit.*, p. 253.
[100] Hunt, *op. cit.*, p. 141.
[101] The petition asking for the court order ended as follows: "May it please your honors to enjoin the said F. L. B. Dorgenoy, marshal, from executing the said order, and to grant to your petitioner such other relief as the nature of his case may require." The response, dated the same day, read thus: "Let an injunction issue agreeable to the prayer of the petition, 25 January, 1808. George Mathews, Junior, Joshua Lewis." *Livingston's Batture*, pp. lxi-lxiii.

therefore, only a brief review will be made of these tracts, culminating in the exhaustive pamphlets of the two principals; a war of words, certainly, but a worthy one, with two such adversaries as Jefferson and Livingston.

Before the end of the year 1807, on December 10, Livingston wrote his "Examination of the Title of the United States to the Land Called the Batture." The tack followed here was to try and shoot holes in the opposing case by charging, first, changing the facts in the case; assumption that French law would apply, rather than Spanish or Roman; and a faulty statement of that law. Most of the material here is found in the later and more complete work.[102]

On an appeal of October 21, 1808, he accused Jefferson of getting the subsequent approval of Congress for an illegal act already committed, asking independent-minded men to approach the affair with an open mind. These, he believed, would declare: "That the rights of private property have been infringed; constitutional privileges broken; the Judiciary degraded, and the sacred trial by jury violated without necessity and without excuse."[103]

The trips to Washington are illustrated by notes and letters to officials.[104] Besides the unsuccessful attempt to meet Jefferson before he left the capital as the outgoing president, Livingston wrote to Secretary of State Madison, asking that he be restored his property while the attorney general was looking into the facts, or that a speedy hearing be called. He received in reply a curt note informing him that the attorney general believed the title was in the United States, and it would be necessary for the President to "keep the ground clear of any adversary possession until they shall have decided on it."[105] Livingston was impatient at this evasion, and a week later wrote again, protesting against the deprivation of his property without even the pretense of a trial, or an examination of his side of the case. He also requested a copy of his petition for an injunction, which he had lent earlier in the visit. Madison answered in three lines, as follows: "Agreeably to the request in your letter of the 13th instant, I enclose the copy of your petition to the Supreme Court at New Orleans."

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[102] *Livingston's Batture*, p. 1.
[103] *Ibid.*, pp. xxi-xxxvii.
[104] See Appendix I, a.
[105] Madison to Livingston, *Livingston's Batture*, "Correspondence," pp. 4-5. The other letters referred to here are found in this section.

Trying hard to be patient, the dispossessed man wrote two days later, saying that he regretted very much not being able to get a copy of the document under authority of which his whole fortune had been confiscated. He found fault with the President's having accepted absolutely the opinion of Mr. Derbigny, the paid attorney for the public, instead of that given unanimously by a territorial court of last resort. In his opinion, the whole procedure was unconstitutional; a citizen is not supposed to be deprived of property without due process of law.

Another aspect of the controversy was the entrance of others than the two principals into the lists. First, as mentioned, Pierre Derbigny gave his arguments supporting the claims of the Federal government. He was answered by Peter S. Du Ponceau, a friend of Livingston, and others later chimed in that their friend had been wronged. Derbigny's points of argument are as follows:[106]

> 1st—Alluvions on navigable rivers belonged to the king of France.
>
> 2dly—The plantation bordering on the limits of the city of New Orleans was sold by the king of France in 1763, when the alluvion situate in front of that land was already in being.
>
> 3dly—Between the alluvion and the land sold, lay a royal road (the same that still exists) and a levee, both which were then, and have still remained public property.
>
> 4thly—The alluvion in question has never ceased to be a royal property, the enjoyment of which the French and Spanish governments at all times left to the public, and on which they constantly hindered private individuals from encroaching.
>
> 5thly—Neither Jean Gravier, nor those from whom he derives his title, ever were in possession of the alluvion; and Bertrand Gravier himself, at the time of his settling a suburb in front of his plantation, declared that he had no claim to the alluvion.

Du Ponceau in his dissertation simply denies these assertions, and produces evidence to the contrary, each point taken separately. He ends by giving his own opinions, the last of which is most significant in its to-the-point-ness.[107]

> . . . And therefore that the claim now set up on the part of the government of the United States to the said alluvion, as a branch of the royal prerogative or otherwise, is not founded, as far as I have seen, in either law or fact, and cannot be supported.

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[106] *Livingston's Batture*, Derbigny, "Case before Counsel," p. xvii.

[107] *Livingston's Batture*, Du Ponceau, "Opinion on the Case of the Alluvion Land or Batture, near New Orleans," p. xliv.

Livingston then went ahead and turned out his own "Case for the Consideration of Counsel," beginning with a review of the history of the Jesuit land before going into the merits of the case.[108] In Appendix I, b, are listed thirteen questions which he asked the world in general concerning the ownership of the land.

Whether or not they were rhetorical questions, two individuals named Jared Ingersoll and W. Rawle undertook to answer them; and, interestingly enough, they agreed generally with the private individual, holding that as to the form of law applied, the French if used here would as a rule give alluvion to riparious landowners. Also, they could not see how any existing act of Congress authorized the President to act as he did, for the mere fact that the land was held under a court decree cut off the possibility of the holder's being one of these "lawless intruders" meant in the act of 1807. If an act authorizing such action as had been taken were passed, it would in their opinion be unconstitutional. Thus, they believed that "Mr. Livingston can maintain an action against the marshal and all who assisted him for his damages."[109]

The first thing he did was to bring suit against the United States marshal who had carried out the order for seizing the batture. This was a hopeless case from the start, for the defendant had no property, making a judgment of no value. Probably the real reason for the suit was to establish the fact that the property had been seized illegally, which would involve those higher up who had directed the marshal's action. The Supreme Court decided, therefore, and probably truly, that this was a collusive case to involve a third party, and ordered that proceedings be dropped.[110]

Livingston next tried his luck in the Federal court at Richmond, with a hundred-thousand-dollar suit against Jefferson.[111] Nothing could be done in Louisiana, the scene of the controversy, unless Jefferson happened to set foot there, which he very carefully kept from doing. In his home district, then, proceedings were started. This threat to his personal fortune alarmed the Ex-President, and he began pulling wires to secure favorable conditions if the case came to trial.[112] The Supreme Court judges at that time still went on circuit, each sitting with the Federal judge of a certain district. While Jefferson had been president, and John Marshall

[108] *Ibid.*, pp. l-lxiii.
[109] *Ibid.*, pp. lxiv-lxviii.
[110] Livingston v. D'Orgenoy, *1 Mart. (O. S.) 87.*
[111] Livingston v. Jefferson, Austin Scott, *Cases on Civil Procedure*, p. 3, reported from *1 Brockenbrough 203.*
[112] Albert J. Beveridge, *The Life of John Marshall*, IV, pp. 100-116.

chief justice of the Supreme Court, the two had reserved for each other the hatred of uncongenial second cousins, and of statesmen whose political theories ran in directly opposite directions. Under Marshall's guidance, the court had been formulating policies so nationalistic, and so assertive of central authority, that the executive branch had tried more than once to control the judiciary.[113]

This time, however, Jefferson's interest in the judiciary was personal, rather than that of an executive officer. The first thing he wanted was a Federal judge in the Richmond district of Virginia who was strong enough to offset Marshall's presence on the bench if and when the batture case was tried. At the time Livingston filed suit, Judge Cyrus Griffin was about to die, and Jefferson was thinking over those who might fill the bill as an antidote to Marshall. He finally decided on Governor John Tyler, who applied for his old office with the hint that he didn't think much of the Chief Justice's policies. The appointment came in due time from President Madison, upon his predecessor's recommendation.

The second thing Jefferson wanted was to secure four members of the Supreme Court favorable to his side of the case, against Marshall's three, in case an appeal was ever taken there. The death, September 13, 1810, of Justice William Cushing presented a problem. This left three Federalists and three Republicans serving, and the appointment should certainly be a Republican. Acceptable jurists of that party were rather scarce in New England, however, and the choice was small. Jefferson favored Levi Lincoln, his old attorney general, but this selection's eyesight was so bad that he refused to be considered. A second choice was Gideon Granger, but unfavorable publicity acquired as postmaster general put him out of the picture. Alexander Wolcott was nominated, and turned down by the Senate. John Quincy Adams was appointed and confirmed, but preferred to keep his diplomatic post as minister to Russia. These eliminations left only one real candidate in the field—the young, nationalistic-minded Joseph Story. Though a Republican, his views were much closer to those of Marshall than of Jefferson, and besides that, he was an expert on the law of real estate, which would probably make him give the subject of the batture a thorough going-over if he ever got the chance.

As it turned out, neither of these appointments affected the matter in hand very much. Marshall himself entered an opinion

[113]See the impeachment trials of Justices John Pickering and Samuel Chase, *Ibid.*, III, pp. 157-222.

that the court could not judge on cases arising outside the Virginia district, even where the defendant was a resident of that district. Jefferson's demurrer as to jurisdiction was therefore sustained, and the facts of the trespass case could not even be considered by the court. Marshall expressed his regret at having to give this ruling, and not allowing the arguments the close attention they deserved, but since this was the sole preliminary question, he deliberately disregarded the rest. The basis for this was Blackstone's exposition of the English common law, which classes trespass cases as local actions. Tyler was sick at the time of the trial, but insisted on sitting, in order to hand down an opinion, and make sure the jurisdiction was ruled out.[114]

This decision didn't keep Marshall from letting the defendant know what he thought of his means of escape.[115]

> . . . Yet these difficulties have not prevailed against the jurisdiction of the court. They are countervailed, and more than countervailed, by the opposing consideration, that if the action be disallowed, the injured party may have a clear right without a remedy, in a case where a person who has done the wrong, and who ought to make the compensation, is within the power of the court.
>
> That this consideration should lose its influence where the action pursues a thing not in the reach of the court, is of inevitable necessity; but for the loss of its influence where the remedy is against the person, and is within the power of the court, I have not yet discerned a reason, other than a technical one, which can satisfy my judgment.

Two later suits before the Louisiana Supreme Court did not touch upon the central question of whether or not the United States had erred in seizing private property. For this reason, a short paragraph each will be enough to give the general idea, though they cover many pages in the Louisiana Reports, and are really worthy of more detailed study.

The case of Morgan v. Livingston et al[116] had one of the lot-holders suing Livingston and his partner, Bigarre, to get title to the batture in front of his lot. He won, the Court deciding that since he ran the risk of losing land by river encroachments, he should get additions to it. The road intervening between lot and

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[114] Scott, *op. cit.*, p. 3.
[115] *Ibid.*, p. 5.
[116] *6 Mart. (O. S.) 19.*

levee did not prevent this, and the title was translated to mean "front to the river." For these and other reasons, Livingston lost claim to one of the strips he had not bought from the lotholders, after arguments and decision covering more than sixty pages.

Another long case was that of Gravier et al v. Livingston et al.[117] Here the absentee brothers and sisters of John Gravier sued the purchasers of the batture, claiming that he had sold their share as well as his own. Whether the whole batture had been awarded to John Gravier by the Spanish court along with the plantation, or whether it belonged to the general estate, was a close point, and the district court had decided for the defendants. In the Supreme Court, however, this was reversed, with the ruling that an heir might bring an act of partition against a person who bought the whole property from a co-heir, which meant for Livingston a lot more courtroom work gone to waste.

This brings us down to those final pamphlets. The opening of Livingston's fullest piece of writing on this subject is an excellent example of his style and convictions.[118]

> When a public functionary abuses his power by any act which bears on the community, (he began) his conduct excites attention, provokes popular resentment, and seldom fails to receive the punishment it merits. Should an individual be chosen for the victim, little sympathy is created for his sufferings, if the interest of all is supposed to be promoted by the ruin of one. The gloss of zeal for the public is therefore always spread over acts of oppression, and the people are sometimes made to consider that as a brilliant exertion of energy in their favour, which, when viewed in its true light, would be found a fatal blow to their rights.

Both Jefferson and Livingston were experienced pamphleteers, and it is hard to indicate in a resume the pointedness of their masterpieces of propaganda. The Ex-President entered the controversy after a long silence, by issuing from Monticello, July 31, 1810, his explanation for his actions some three years before. The other answered after another three years spent in vainly trying to get some action from Congress, with what appears to be a complete demolishment of the defensive arguments. All these words didn't settle anything, of course, except perhaps in the minds of a few of that "public" to which both were appealing.

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[117] *6 Mart. (O. S.) 281.*

[118] Livingston, *Answer to Jefferson, op. cit.*, p. 113.

Mr. Jefferson starts with his version of the batture's history, and after a few preliminary skirmishes, gets down to his main points. The first is that by the French civil law, alluvion went to the king as sovereign, which right the national government would inherit.[119] Livingston denies this as being a rule, asserting that four of the other's authorities—Guyet, Ferriere, Denisart, and the Encyclopedia—are really on his side, and state very clearly that adjacent landowners get alluvion, and the fifth writer, Pothier, does not support the king's claim very clearly or lengthily. He then goes on to show that Roman Spanish, and English common law all award alluvion to riparious landowners.[120]

The second line of defense was that alluvion accrues only to rural and not urban property, and the creation of the suburb vested the alluvion in the public.[121] This reasoning was based on translating the Latin word *ager* as field, meaning country land, whereas Livingston interpreted it to mean any sort of land, in the city as well as outside. Thus alluvion of *ager* would benefit city landowners as well as their country cousins.[122]

A third argument was that the batture or beach was not alluvion, but part of the river's bed, because the accretion was perceptible to as much as seven feet a year; and because of the derivation of the word batture from the French *battre,* to beat.[123] Livingston met this by saying that any accretion at all would be perceptible, and any number of words having nothing to do with the bed of a river come from *battre,* such as battalion and battering-ram.[124]

The fourth head of defense was that the use being made of the batture was inconsistent with the safety and well-being of the city. The abatement of a nuisance would thus by ancient custom from the Nile region and others be sufficient reason for seizing the works. The former owner simply said that they were not at all a nuisance, nor in the least dangerous to the city, and anyhow the right of interference belonged to the territorial government. Then, too, if a nuisance, they ought to be destroyed, not left to allow time and weathering to do it.[125]

Livingston then went into his reasons why the Squatters' Act of 1807—which, incidentally, was passed after this trouble came

[119]Jefferson, *op. cit.*, p. 20.
[120]Livingston, *op. cit.*, p. 46.
[121]Jefferson, *op. cit.*, pp. 39-40.
[122]Livingston, *op. cit.*, p. 178.
[123]Jefferson, *op. cit.*, pp. 47-48.
[124]Livingston, *op. cit.*, p. 190.
[125]*Ibid.*, p. 221.

up—did not justify the executive action on this question. First, he said that neither the letter nor the spirit of the law applied, since its objects are squatters and uncultivated land. Second, the directions of the act were not followed, for no six-months' interval of investigation was allowed. Third, if the act took in this case, it was unconstitutional, because it created a confusion of conflicting powers in the government; judicial power was given to some executive officers, which is dangerous; the act violated certain constitutional provisions, such as the amendment preventing the deprivation of life or property without due process of law.[126]

Occasionally a spirited remark stands out in both reports, perhaps not so good-natured when one remembers that something over a hundred thousand dollars was at stake. At one place Jefferson had this to say:[127]

> . . . And for six years ensuing, he (Jean Gravier) never manifested one symptom of ownership; until Mr. Livingston's arrival there from New York, with the wharves and ships of that place fresh in his recollection. The flesh-pots of Egypt could not suddenly be forgotten, even in this new land of Canaan.

Livingston's retort was that he knew even less about the flesh-pots of Egypt than the former president seemed to know of his country's laws.[128]

An even more pointed thrust was the charge that Mr. Jefferson had more than once used mistranslation to bolster up his case. Here are the exact words:[129]

> . . . Of false reasoning, therefore, I ought not to complain; but I protest against false translations. They are destructive of the good faith which ought to reign even among the most virulent disputants; and deceive those, who confide as well in the author's integrity, as in his ability to render faithfully all the texts which he may cite. A single instance it would be uncandid to characterize thus seriously, even if it were important; frequent instances might be passed over in silence, if they were not very material; and both in the one and the other case, they might be ascribed to ignorance of the langauge, if the author did not profess an acquaintance with it, and, what is more important, if he had not before him faithful

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[126] *Ibid.*, pp. 110-111.
[127] Jefferson, *op. cit.*, p. 8.
[128] Hunt, *op. cit.*, p. 175.
[129] Livingston, *op. cit.*, pp. 204-205.

> translations of the very passages he perverts. But when the false version is so important as to be made the basis of an argument, where it occurs more than once, and where the author not only understands the language but is guided in the interpretation of the very passage, by an able and strenuous advocate in the same cause; under such circumstances, I confess I can feel no indulgence, and admit no excuse.

The batture controversy was not a pleasant part of Livingston's life. And yet perhaps it throws light upon a favorable, if human, side of his character: the determination to get his rights or know the reason why. Later, he and Mr. Jefferson became somewhat reconciled, and the latter sent his congratulations on the success of the Criminal Code.

CHAPTER VI

Legislator

Some twenty years after serving his first three terms in Congress, Livingston began his legislative career all over again, by taking a place in the Louisiana state legislature. Entering into the spirit of the work during his two sessions, he made himself one of the most useful members of the body, showing what he might do in a legislative way if sent to Washington, at what must have been a considerable sacrifice of time and earning power as a lawyer. However, he was well-adapted to the legislative method of reports and deliberative action, and was probably glad to put his experience at the state's disposal before leaving again for the North. His interests were varied enough to touch many subjects, and he made quite a record.

The 1820 session of the Louisiana House of Representatives met Monday, November 20, with Edward Livingston representing Plaquemines parish.[130] After Governor James Villere's message was read to the General Assembly on Wednesday, the members of the Senate went to their hall of meeting, and Livingston introduced a resolution for approving the impartiality and moderation of the administration's course. Speaker Armand Beauvais then appointed him with Moreau Lislet and Philemon Thomas on the contemplated

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[130] *Journal of the Louisiana House of Representatives, First Session, Fifth Legislature*, p. 1. The copies of the *Journal* used, found in the Louisiana Library (law) on the top floor of the courthouse in New Orleans, are said to be the only ones in existence.

committee. Again Mr. Livingston proposed a resolution, this time that as much of the Governor's message as related to the amelioration of the criminal code be referred to a select committee. The motion passed, and those serving were Livingston, John R. Grymes, and Moreau Lislet. Other resolutions from the same source recommended the referral to special committees of those parts of the message dealing with public health and the judiciary.[131]

The interesting point of whether or not Mr. Livingston was a resident of Plaquemines parish was reported by the committee of elections on Thursday, through the chairman, John Buhler of East Baton Rouge. Philip Caldwell of Catahoula resolved that the portion of the report relating to Livingston be dropped, but the House passed instead a resolution creating a select committee of five members to inquire into the credentials of the member from Plaquemines.[132] The next day an adverse memorial was turned in by James Wilkinson, an inhabitant of Plaquemines parish, asserting that Edward Livingston, Esq., was disqualified from occupying his seat, on the grounds, first, that he had not resided for the year before the election in the district from which chosen; and second, that he had not held for one year, in this particular parish, landed property of the value of five hundred dollars. The matter was given to the select committee to look into.[133]

The following Wednesday a report was made by David A. Randall, chairman of the select committee of five, based on the testimony of witnesses examined to take up the points in the memorial. Judge Joshua Lewis, of the first district court, testified that since coming to the state in 1807, he knew Mr. Livingston to leave the city rather often to visit his plantation in Plaquemines, making it necessary to continue some of the suits in which he was engaged. Other witnesses convinced the committee that the election requirements were met, for Livingston had stated his intention four years before to make Plaquemines his legal residence. His plantation included a sugar mill operated by steam, and he received friends at the house there; his house in the city was only rented. True, his title to the hundred-thousand-dollar property was clouded by having the deed of sale conditional until a certain sum of money could be paid a Mr. Winter, but the committee agreed that this was nothing more than security. And then Mr. Livingston owned other

[131] *Ibid.*, p. 2.
[132] *Ibid.*, p. 8.
[133] *Ibid.*, p. 9.

property in the parish of Plaquemines. The report for accepting the credentials was adopted by the House, and the matter was ended.[134]

During the following days the new member was reasonably active on his various committee asignments, reporting for that on public health as its chairman at one time.[135] On January 2, he submitted to the House a petition of masters of vessels in the port of New Orleans, asking for certain relief, and was put on the special committee which was created.[136] The work of his committee was considerably varied, including, for instance, assistance given the translators of the Partidas,[137] protection of religious assemblies,[138] appeals to the Federal government for relief in the arrangement of the post office.[139] For the remainder of the session he reported and resolved, voted for and against, with little out of the ordinary, though the Journal does reveal an interesting point now and then.

One such case occurred on Wednesday, February 7, when the House took up some amendments passed by the Senate for a bill providing against the introduction of infectious disease. A motion was made for the adoption of the amendment giving power to the governor of appointing one health officer and a resident physician; it passed by a vote of 16 to 15, Livingston in the affirmative. Another of the amendments reduced the amount for meeting the necessary expenses from $20,000 to $10,000, which Livingston spoke against accepting. The vote revealed a tie with 14 on each side, and the Speaker killed the amendment with his vote.[140]

As chairman of the judiciary committee, Livingston introduced about this time one bill establishing trial by jury in the Supreme Court,[141] and reported on another granting to district courts the right to judge divorce cases.[142] For other committees he reported on acts changing the time for assessment and payment of taxes in New Orleans,[143] and on the erection of a penitentiary.[144]

From the standpoint of this study, however, by far the most important work of the session was Livingston's selection by joint

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[134] *Ibid.*, p. 14.
[135] *Ibid.*, p. 38.
[136] *Ibid.*, p. 41.
[137] *Ibid.*, p. 42.
[138] *Ibid.*, p. 40.
[139] *Ibid.*, p. 43.
[140] *Ibid.*, p. 75.
[141] *Ibid.*, p. 78.
[142] *Ibid.*, p. 78.
[143] *Ibid.*, p. 83.
[144] *Ibid.*, p. 83.

assembly of the two houses to prepare a criminal code. At twelve o'clock on February 13, the Senate was invited in. The ballots as cast showed Livingston with 30 votes, Moreau Lislet with 10, and A. L. Duncan with 5. The Senate members then filed out, and House business continued.[145] The next day Livingston made a report for the committee to which had been referred that part of the Governor's message relating to the construction of a penitentiary.[146] The bill accompanying the report for this was first read in French, and immediately passed into a second reading, with a third scheduled the following day.[147] The Senate approved a resolution endorsing the plan for erection of a penitentiary, and authorizing the governor to proceed with it. The legislature adjourned *sine die* on Saturday afternoon, February 17, after the usual messages of felicitation had been exchanged.[148]

The next session of the Louisiana legislature, that beginning January 7, 1822, found Livingston again the representative from Plaquemines, but by this time he was deep in his codifying projects and was comparatively inactive on committee assignments. He no longer served on the important standing committees, such as that on ways and means, though still retaining his post with such a special group as the penitentiary committee,[149] and helping to draw up a protest to the Federal government as to the "alarming state of our fortifications."[150] He also represented the House on a joint committee of both houses for examining the judicial system then in use, and reporting such amendments as might be considered necessary.[151] As chairman of the committee appointed on the judiciary, he was guiding three bills through the lower house at one time. The first tried to establish a time when the Supreme Court, the district court, and the parish court should be held in the city of New Orleans;[152] a second prescribed the "mode of suing for divorce from the bonds of matrimony;"[153] the third was intended to preserve the trial by jury, which was necessary because of the old French custom to discard it sometimes.[154] Later he introduced another bill for amending several acts regulating the practice of the Supreme Court.[155]

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[145] *Ibid.*, p. 82.
[146] *Ibid.*, pp. 83-84.
[147] *Ibid.*, p. 84.
[148] *Ibid.*, p. 90.
[149] *Journal of the Louisiana House of Representatives, Second Session, Fifth Legislature*, p. 8.
[150] *Ibid.*, p. 8.
[151] *Ibid.*, p. 12.
[152] *Ibid.*, p. 25.
[153] *Ibid.*, p. 25.
[154] *Ibid.*, p. 25.
[155] *Ibid.*, p. 34.

On March 1, the penitentiary committee made a report through the chairman, which is given in Appendix II. The accompanying act for the "erection of a penitentiary prison" was given its first reading.[156]

A small comedy of votes took place on March 7, after Livingston had proposed an amendment to a judicial act, having it passed with only one dissenting vote, that of Representative Laroque Turgeau. This legislator later, however, voted for the bill as a whole as amended. The amendment provided that where any contract or other written act or proceeding that might be useful in judicial proceedings was written in the French language, any person interested might secure an English translation, which should legally be considered as the original in any judicial proceeding. The dissenting voter obtained permission to explain that he had voted against the amendment for two reasons: first, that it did not define the meaning of the "judicial proceedings;" and second, that it seemed to assert that no act passed in the French language could be valid. Then, when he saw the futility of his holding out any longer, he had voted for the whole bill to see if anything couldn't be done to lessen the evil.[157]

At two o'clock on March 14, the House remained seated, and the Senate proceeded into the hall to help select the three jurisconsults who should revise the civil code. Out of 48 members present, the results were as follows: Moreau Lislet, 43 votes; Livingston, 25; Derbigny, 25; Morel, 2; Carlton, 1. Those drawing the assignment of revising the civil code and preparing a commercial code were of course the first three.[158]

The last time Mr. Livingston appears in the Journal was when he offered an amendment to an act punishing contempt of court in lawyers. He had voted for the bill originally, when it passed, but on a motion for reconsideration, his suggestion was passed by the House. To hold contempt cases within bounds, he added, "Provided, that nothing shall be considered as a contempt which does not take place in the presence of the court, and which does not interrupt the proceedings of the said court, or insult the judges, or one of them."[159]

The session ended that night, and Edward Livingston stepped out of state legislative activities for a time before entering Congress.

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[156] *Ibid.*, pp. 60-61.
[157] *Ibid.*, p. 65.
[158] *Ibid.*, p. 73.
[159] *Ibid.*, p. 83.

CHAPTER VII

Conclusion

A man is said to be remembered by his works, and, if the pun will be excused, this is perhaps more especially true of his printed works. Even more than in the accounts of others, we can see Livingston in his own writings, even those strictly of a legal nature. Important as a lawyer's personality and sociability may be on his success, these qualities influence us less today than what he put down in black and white. Before closing this chronicle of Mr. Livingston's career in the middle years of life, therefore, perhaps some attention might be given to his methods in this all-important art. And, besides, it may help to connect together, more or less, the subjects already discussed, which everyone agrees is what a conclusion really ought to do, but which is a little hard to do sometimes. In this case, for example, Livingston probably never consciously planned the sort of thing he would do, but took on just what came along. The net result, naturally enough, is that these activities are rather independent of each other, except in that the same man did them, they are all related to the law, and each called upon the use of his busy pen to a greater or less extent.

Courtroom argument is not always a matter of passionate appeals to the jury or cross-questioning of witnesses; in fact, civil cases may often carry the legal points into extremely deep and narrow channels, calling for a display of logical reasoning from everyone taking part. Such a case was Syndics of Amelungs' v. Bank of United States. Here is Livingston's concise narration of the facts in the case, in which he took the part of the plaintiffs.[180]

> This is a suit brought by the syndics of a bankrupt for certain promissory notes, lodged by the bankrupt in the office of the Bank of the United States in this city for collection. They refuse to deliver them, alleging a right to apply the proceeds of these notes to the payment of others, drawn by the bankrupt, and discounted at the bank, which have been protested for non-payment. To determine on this alleged right, we must first ascertain the nature of the contract, by which the notes in question were placed in the custody of the bank. It has been likened to a contract of factorage, to a pledge, to a mandatory contract, to a deposit.

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[180] 1 *Mart.* (*O. S.*) 338.

Later on, in an expository passage, he explains a regular deposit.[161]

> That is a regular deposit which is made of anything which does not consist in number, weight or measure; or if it be money it is enclosed in a purse, bag, or any other thing sealed or locked, and which is given to the depository, not that he should use; but that he should keep it, and therefore he is obliged to return the same thing, and not another, although it be of equal quantity and value, under the penalties of theft, and those I mentioned in my third point.

Another case gives us a fair sample of his method in argument.[162]

> There cannot be any doubt that an auctioneer may have a partner; in fact most of the auctioneers in this and every commercial city in the United States have. They require aid, and may as well pay for it by a participation in their emoluments, as by a fixed salary. Ministerial officers often have deputies, who are compensated for the services they render to their principal, by a portion of his fees; and what are these officers, but partners? May not judicial officers procure aid in the same manner? If a justice of the peace, to whom his inexperience or convenience may render the employment of a clerk useful, see fit to reward it by the allowance of a part of his emoluments of office, is there anything illegal in this? Yet, what are a sheriff's deputy and this justice's clerk, but partners in the profits of the offices of their principals?

And in the philosophical vein:[163]

> My dear son: The people who tell you that I could pretend to any political advancement in New York, if they are not actuated by a complaisant insincerity, cannot, I think, be well informed. Popularity is a prize too eagerly contended for by candidates who make it the pursuit of their lives to leave any hope of acquiring it to one who never understood, and who disdained to practice its mysteries. Of all the follies of my youth, and I have had too many, the one of which I am most perfectly cured is the desire of political preferment. Do not take this as a general reflection applicable to all; the pursuit of honest fame, the desire to serve your country, the noble ambition of devoting even your life when her safety requires it, all these it would be a kind of sacrilege to characterize as follies. Mine consisted in the endeavor to push myself forward into places that would have been, certainly as well, perhaps much better,

[161] *Ibid.*, par. 342.
[162] Faurie v. Morin's Syndics et al, *4 Mart. (O. S.) 39.*
[163] Livingston to his son, Lewis. Hunt, *op. cit.*, pp. 236-237.

> filled by many others, to the neglect of my private affairs, and by that means involving myself. Take this, therefore, as a rule which I cannot too often or too seriously impress upon you. Never accept any public employment that will directly or indirectly trench upon your independence. . . .

For a descriptive passage, there is his sketch of the Pennsylvania solitary confinement system.[164]

> . . . To carry this plan into execution a prison has been erected at Pittsburg, and another is nearly completed on a most extensive scale, at Philadelphia. This last is most admirably contrived for perfect seclusion. The purposes of cleanliness do not demand the entrance of an attendant, or the egress of the prisoner. His food is furnished without his seeing the hand that brings it; and a complete inspection of every part of the cell is had, while the prisoner can neither see nor hear the approach of his keeper; all is silence and solitude, and, if these alone can work reformation, there was never a building better calculated to produce the effect. Whether labour is to be permitted or enjoined does not seem to be determined. There is a court, however, annexed to each cell, in which solitary labour may be performed without much danger of communication between the prisoners. The system is simple, and has few details beyond those I have mentioned in describing it.

It isn't necessary to determine here just what is Livingston's place in the state's legal history; it is enough that he did what he could with each problem as it came along. We have seen him putting the Louisiana law into practice, investigating the causes of crime, helping to pass statutes, compiling civil customs, and acting as his own counsel in trying to recover a personal fortune in real estate. Later, he passed on to new duties in Washington and Paris, but then as politician, statesman, and diplomat. It may not be too much to say that his legal reputation was built chiefly during the years he spent in Louisiana.

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[164]Livingston, *Works*, *op. cit.*, pp. 523-524.

APPENDIX I, a

Note to Mr. Jefferson

Mr. Livingston having on his arrival this evening been informed that the President of the United States intended very shortly to quit the seat of government, begs leave most respectfully to request that he may be informed whether it will be convenient, and at what time, for the President of the United States to grant him a short audience, previous to his departure. It is on a subject extremely interesting to Mr. Livingston, and which formed the sole motive for his voyage from New Orleans.

A fear that the President might depart at an earlier period than it would be proper to pay his respects in person, has induced Mr. Livingston to take the liberty which he hopes the occasion will excuse.

Jefferson's Reply

City of Washington
May the 5th, 1808

Th. Jefferson presents his compliments to Mr. Livingston, and being on his departure and much pressed in finishing sundry articles of business, he finds it impossible to enter on any new subject at this time. It is however the less important, as whatever be the subject of Mr. Livingston's application, it goes of course in the first instance to the head of the department to which it belongs, from whom it will be communicated to

Th. J.

May 6th, 1808
Edward Livingston, Esq.
Crawford's Hotel, Georgetown.

APPENDIX I, b

Mr. Livingston's Thirteen Questions

I. By what law is the claim of the proprietor of the twenty arpents front of the alluvion land, to be determined? By the law of Spain, to whom the country was conveyed prior to the sale in 1763? Or by the laws of France who actually held the country until 1769? If by the law of France, is it not incumbent on the party contending for that law as the rule of decision, to show that there was an alluvion formed between the year 1763 and the year 1769?

II. There being no dispute as to the Spanish law, in case that is resorted to, it is required to know what is the law of the late king-

dom of France, on the subject of alluvion on navigable rivers; does it belong to the king or the proprietor of the adjoining soil?

III. What is the law on the subject, by the custom of Paris?

IV. What is on this subject the law of the French colonies generally, and of Louisiana in particular, as it stood before the Spanish laws were introduced there?

V. Did not the royal right of alluvion in those provinces of France, where it formerly prevailed, depend on the principles of feudal tenure; and will the king have it when it is granted in *franc-aleu?*

VI. Does under the law of the late kingdom of France or of Louisiana as one of its colonies, or under the custom of Paris, the right of the public to use a road along a navigable river, debar the proprietor whose lands are bounded on the river, of the right of alluvion?

VII. Will the verbal declaration of the proprietor, that he had abandoned, deprive him of his property, without any evidence in writing, or any proof of the precise terms, time, and conditions of abandonment, or will it operate when the evidence is of the uncertain nature stated in the facts?

VIII. Have the United States under the circumstances of the case now stated, any title to the land called the batture in front of the suburb Ste. Mary?

IX. Was the order to dispossess the occupants of the batture, a legal exercise of the power vested in the president by the law of the 3d March, 1807?

X. Was not the judgment of the court such a *prima facie* evidence of title, as should have entitled Gravier, and those claiming under him, to the right of a trial before he could be dispossessed?

XI. If the law of the 3d March, 1807, should, in terms, authorize the proceedings that have taken place, is not the law itself unconstitutional and void?

XII. Was it lawful in the president to issue his warrant before the commissioners had reported according to the proviso in the latter clause of the first section of the law?

XIII. Has Mr. Livingston any action, and against whom for his damages?

APPENDIX II

Report of Penitentiary Committee of Louisiana Legislature, March 1, 1822

The committee appointed to examine the several plans for a penitentiary, transmitted by the Governor to the General Assembly, respectfully report:

That they have carefully examined and compared the several plans, and have, after considering all the circumstances, selected that proposed by Robert Mills, of South Carolina, as the one which unites, in a great degree, all the advantages required by the resolutions of the General Assembly. The estimate of the expense accompanying the plan amounts to 260,000 dollars; but, as it is formed according to the prices of materials and labor in Charleston, which appear to be much below the prices of this place, your committee have estimated that it would cost here the sum of 300,000 dollars; but as the same is much more extensive than would at present be wanted, they suppose that the sum of 200,000 dollars would be sufficient to erect such an establishment, by reducing the plan, as would be sufficient for the confinement of 200 convicts and for their employment at hard labor or in solitude, in such cases and divisions as may hereafter be established by law. They consider this establishment as of primary importance; but all their reflections and researches into the nature of the penitentiary system have convinced them, that if an ill-judged economy prevents the erection of such buildings as are necessary for the classification and proper employment of the convicts, that the system will be as it has been in the other states, in great degree inefficient, they have, therefore, thought it a duty, while they paid a due regard to economy in the selection of a plan, not to suffer that consideration so far to influence them, as to reject the best on account of some addition of expense.

The General Assembly, as well as the Executive, have so frequently expressed their opinion of the utility of the penitentiary system, that the committee do not think it proper to add any reflections on this subject, further than by repeating, that the utility, perhaps the very existence, of that mode of punishment, depends on the liberal and wise plan on which the buildings are to be erected.

They have, therefore, prepared a bill for the erection of a penitentiary prison, which they herewith present.

All which is respectfully submitted.

(Signed) Edw. Livingston.

Appendix III

Cases in Which Livingston Took Part Before the Louisiana Supreme Court, from the Fall Term of 1809 to that of 1819

Mann and Bernard v. Hunt and Smith, 1 Mart. (O. S.) 22.
Livingston v. D'Orgenoy, 1 Mart. (O. S.) 87.
Territory v. Barran, 1 Mart. (O. S.) 208.
Ramozay et al v. The Mayor etc. of New Orleans, 1 Mart. (O. S.) 241.
Emerson v. Lozano, 1 Mart. (O. S.) 265.
The Orleans Navigation Company v. The Mayor etc. of New Orleans, 1 Mart. (O. S.) 269.
Syndics of Amelungs' v. Bank of the United States, 1 Mart. (O. S.) 322.
Orleans Navigation Company v. The Mayor etc. of New Orleans, 2 Mart. (O. S.) 10.
Henderson v. Lynd, 2 Mart. (O. S.) 57.
Marr v. Lartique, 2 Mart. (O. S.) 89.
Murray v. Winter and Harman, 2 Mart. (O. S.) 100.
Picket and Lacroix v. More, 2 Mart. (O. S.) 113.
Davis v. Mitchell, 2 Mart. (O. S.) 115.
Hudson's Case, 2 Mart. (O. S.) 172.
Delogny v. Rentoul, 2 Mart. (O. S.) 213.
Brofield's Heirs v. Lynd, 2 Mart. (O. S.) 213.
Nelson et al v. Morgan, 2 Mart. (O. S.) 256.
McMaster et al v. Duncan et al, 2 Mart. (O. S.) 264
Jacob et al v. Ursuline Nuns, 2 Mart. (O. S.) 269.
W. F. Macarty's Case, 2 Mart. (O. S.) 277.
Livingston v. Cornell, 2 Mart. (O. S.) 281.
Ducournau v. Morphy, 2 Mart. (O. S.) 297.
Le Breton v. Nouchet, 3 Mart. (O. S.) 60.
Pizerot et al v. Meuillon's Heirs, 3 Mart. (O. S.) 97.
Duplantier v. St. Pe, St. Pe v. Duplantier, 3 Mart. (O. S.) 127.
Bourcier v. Lanusse, 3 Mart. (O. S.) 661.
Renthorp et al v. Bourg et ux., 4 Mart. (O. S.) 97.
Doubrere v. Papin, 4 Mart. (O. S.) 184.
St. Maxent's v. Amphoux's Syndics, 4 Mart. (O. S.) 192.
Roussel v. Dukeylus' Syndics, 4 Mart. (O. S.) 218.
Le Blanc et al v. Croizet, 4 Mart. (O. S.) 272.
Decker's Executors v. Bradford's Heirs, 4 Mart. (O. S.) 338.
Rion v. Rion's Syndics, 4 Mart. (O. S.) 341.
Denis v. Cordeviella, 4 Mart. (O. S.) 344.
Beard v. Poydras, 4 Mart. (O. S.) 348.
Rust v. Randolph, 4 Mart (O. S.) 370.
Labranche v. Watkins, 4 Mart. (O. S.) 391.
Lewis v. Fram, 4 Mart. (O. S.) 397.

Smith v. Kemper, 4 Mart. (O. S.) 409.
White et al v. Holsten et al, 4 Mart. (O. S.) 471.
Hunt v. Norris et al, 4 Mart. (O. S.) 517.
Claiborne v. Debon et al, 4 Mart. (O. S.) 534.
Rion v. Rion's Syndics, 4 Mart. (O. S.) 591.
Quierry's Ex'r v. Faussier's Ex'rs, 4 Mart. (O. S.) 609.
Baudin v. Pollock et al, 4 Mart. (O. S.) 613.
Morgan v. Bell, 4 Mart. (O. S.) 615.
Meeker's Assignees v. Williamson et al, 4 Mart. (O. S.) 625.
Amory et al v. Grieve's Syndics, 4 Mart. (O. S.) 632.
Denis v. Cordeviella, 4 Mart. (O. S.) 654.
Fleckner v. Grieve's Syndics, 4 Mart. (O. S.) 679.
Petit v. Gillet, 5 Mart. (O. S.) 19.
W. and L. Cromellin v. Their Creditors, 5 Mart. (O. S.) 78.
Rust v. Randolph, 5 Mart. (O. S.) 89.
Cottin v. Cottin, 5 Mart. (O. S.) 93.
Chapillon and Wife v. St. Maxent's Heirs, 5 Mart. (O. S.) 166.
Broutin et al v. Vassant, 5 Mart. (O. S.) 169.
Poydras v. Livingston, 5 Mart. (O. S.) 292.
Zanico v. Habine, 5 Mart. (O. S.) 372.
Baritau v. Lefevre, 5 Mart. (O. S.) 401.
Gardner et al v. Harbour et al, 5 Mart. (O. S.) 408.
Louisiana Bank v. Dubreuil, 5 Mart. (O. S.) 416.
Augustin et al v. Cailleau et al, 5 Mart. (O. S.) 464.
Reboul v. Nero, 5 Mart. (O. S.) 490.
Doubrere v. Papin, 5 Mart. (O. S.) 498.
Stearns v. Rust, 5 Mart. (O. S.) 518.
Harrod et al v. Constant, 5 Mart. (O. S.) 575.
Williamson et al v. Their Creditors, 5 Mart. (O. S.) 618.
Morgan v. Livingston et al, 6 Mart. (O. S.) 19.
Gravier et al v. Livingston et al, 6 Mart. (O. S.) 281.
Fouque's Syndics v. Vigniaud, 6 Mart. (O. S.) 423.
Williamson et al v. Their Creditors, 6 Mart. (O. S.) 431.
Fleekner v. Grieve's Syndics, 6 Mart. (O. S.) 504.
Castanedo v. Toll, 6 Mart. (O. S.) 557.
Dodge's Case, 6 Mart. (O. S.) 569.
Terril et al v. Flower et al, 6 Mart. (O. S.) 583.
Ralston v. Barclay et al, 6 Mart. (O. S.) 649.
Hunt v. Morris et al, 6 Mart. (O. S.) 676.
Harrod et al v. Glennie et al, 6 Mart. (O. S.) 685.
Poeyfarre v. Delor, 7 Mart. (O. S.) 1.
Williamson et al, Syndics, v. Smoot et al, 7 Mart. (O. S.) 31.
Weeks v. McMicken, 7 Mart. (O. S.) 54.

APPENDIX IV

From the Code of Crimes and Punishments: Of offenses against the current coin of the state.

Art. 253. Whoever shall counterfeit any GOLD OR SILVER COIN, whether such coin be of the United States, or of any other government; or, whoever shall PASS, or offer to pass any such counterfeit coin, knowing it to be counterfeit; shall be imprisoned at hard labour not less than seven nor more than fifteen years.

Art. 254. Whoever, with the intention of committing the crime of counterfeiting, or of aiding therein, shall have in his possession any die, or other instrument, such as is usually employed solely for the coinage of money or shall make or repair any such die or other instrument, or shall prepare, or have in his possession and conceal any base metal prepared for coinage, shall be imprisoned at hard labour not less than two nor more than four years; provided, that if any of the acts specified in this article shall be accompanied by circumstances which would render the accused liable, as an accomplice, for either of the crimes designated in the first article of this chapter, he may be prosecuted for such offence.

Art. 255. To counterfeit, under the provision of this section, means, to make in the semblance of true gold or silver coin, one having in its composition a less proportion of the precious metal, of which the true coin intended to be imitated is composed, than is contained in such true coin, with intent that the same should be passed as true, either in the United States or elsewhere. To alter any coin of a lower value, with the like intent, so as to make it resemble one of a higher value, is also a counterfeit. It is not necessary, to constitute the offense, that the resemblance should be perfect.

Art. 256. The gold or silver coins mentioned in this chapter mean any pieces of gold or silver, or of which gold or silver is the principal component part, and which pass as money in the United States, or in any foreign nation, although such pieces may not be made current by any of the United States.

Art. 257. Whoever shall have in his possession any counterfeited gold or silver coins, with intent to pass them as true, or to cause them to be passed either in the United States or any other nation, he shall be imprisoned at hard labour not less than two nor more than four years.

BIBLIOGRAPHY

Books:

Beveridge, Albert J., *The Life of John Marshall*, 4 vols., Boston and New York, Houghton Mifflin Co., 1929.

Biographical and Historical Memoirs of Louisiana, 2 vols., Chicago, Goodspeed Co., 1892.

Foote, Henry S., *The Bench and Bar of the South and Southwest*, St. Louis, Soule, Thomas, & Wentworth, 1876.

Gayarré, Charles Etienne Arthur, *History of Louisiana*, 4 vols., New Orleans, Gresham, 1879.

Hunt, Charles Havens, *Life of Edward Livingston*, New York, Appleton, 1864.

Hunt, Louise Livingston, *Memoir of Mrs. Edward Livingston*, New York, Harper, 1886.

Saxon, Lyle, *Lafitte the Pirate, New York and London*, Century Co., 1930.

Scott, Austin W., *Cases on Civil Procedure*, Cambridge, Mass., Harvard University Press, 1915.

Stroud, George M., *A Sketch of Laws Relating to Slavery*, Philadelphia, H. Longstreth, 1856.

Source Material:

Acts of the Louisiana Legislature, 1816-17-19, 1820, 1821, 1822, 1823, 1826, 1828, New Orleans, State Printer.

Carleton, Henry, and Lislet, Moreau, *Translation of the Spanish Partidas*, 2 vols., New Orleans, James McKaraher, 1820.

Journal of the Louisiana House of Representatives, First Session, Fifth Legislature.

Journal of the Louisiana House of Representatives, Second Session, Fifth Legislature.

Livingston, Edward, *Works of Edward Livingston*, 2 vols., New York, published by The National Prison Association of the United States of America, 1873.

Livingston, Edward, and Jefferson, Thomas, *New Orleans Batture*, Baltimore, published in the *Americal Law Journal*, V., 1814.

Livingston, Edward, Derbigny, Pierre, and Lislet, Moreau, *Report to the Honorable the Senate and House of Representatives of the State of Louisiana in General Assembly Convened*, New Orleans, J. C. de St. Romes, 1823.

Livingston's Batture (Miscellaneous data).

Martin, Francois Xavier, ed., *Louisiana Supreme Court Reports.*

Robertson, James Alexander, ed., *Louisiana Under the Rule of Spain, France, and the United States, 1785-1807*, 2 vols., Cleveland, Arthur H. Clark Co., 1911.

Thorpe, Francis Newton, ed., *American Charters, Constitutions, and Organic Laws*, 7 vols., Washington, Government Printing Office, 1909.

United States Supreme Court Reports.

Articles:

Ellis, Judge T. C. W., "The Louisiana Bar, 1813-1913," *Louisiana Historical Quarterly*, IV., (1921), pp. 81-106.

Gayarré, Charles Etienne Arthur, "The New Orleans Bench and Bar in 1823," *The Louisiana Book: Selections from the Literature of the State*, New Orleans, R. F. Straughan, 1894, pp. 54-70.

Wade, John D., "Derbigny, Piere Auguste Charles Bourguignon (1767-Oct. 6, 1829)," *Dictionary of American Biography*, New York, Scribner, 1930, V., pp. 248-249.

SUFFRAGE AND REPRESENTATION IN ANTE-BELLUM LOUISIANA

By ROGER WALLACE SHUGG

If it is true that "in democracies, the majority alone gives law,"[1] slaveholding Louisiana never pretended to be a democratic State. Suffrage or representation, and sometimes both, were arranged to exclude a majority of the people, white or black, from effective control of their government. They were ruled by a minority made up of planters, merchants, and lawyers. To understand how this commercial and planting aristocracy came to dominate Louisiana before 1860, let us investigate the ostensible source of political power, suffrage, and the division of legislative power, representation.

The original constitution, under which Louisiana was governed from 1812 to 1845, bestowed suffrage on all free white males who had purchased public land or paid State taxes.[2] Small as this property test may seem, it placed the ballot chiefly in the hands of landowners and shopkeepers,[3] and never admitted to the polls more than a third of the adult freemen.[4] These voters were further restricted in the election of legislative and executive officers to candidates whose landed estates ranged in value from $500 to $5,000.[5] The right to vote, as well as those for whom a vote might be cast, depended on property qualifications.

Representation, it was stipulated, should be "equal and uniform," according to the number of registered electors.[6] But little effort was made to put this principle into practice. In the lower chamber of the General Assembly, each district was granted its proportionate share of seats, to be adjusted every four years to the growth of the electorate. But the Senate, with power to veto all legislation and constitutional amendments, was drawn from

[1] *The Education of Henry Adams* (Boston, 1927), p. 336.
[2] *Constitution of 1812*, Art. II, sec. 8. This constitution was printed in *Niles' Weekly Register*, IV (1813), 428-31. Together with later constitutions, it may be conveniently found in the *Report of the Secretary of State, 1902*, pp. 55-309, and B. W. Dart, ed., *Constitutions of the State of Louisiana* (Indianapolis, 1932).
[3] *cf.* M. Evans, *A Study in the State Government of Louisiana* (Baton Rouge, 1932), p. 29.
[4] e. g., the presidential election of 1844, *Seventh Census, 1850, Compendium*, pp. 45, 50.
[5] *Constitution of 1812*, Art. II, secs. 4, 12; Art. III, sec. 4.
[6] *Ibid.*, Art. II, sec. 6.

fourteen districts, "forever . . . indivisible," whose permanent boundaries favored planters in the black belt at the expense of white people in New Orleans and on the frontier. The city, for example, which contained a quarter of the State's population, chiefly white, was represented by only two senators, while black belt districts with an equal proportion of people, mainly slaves, boasted of seven senators, or half the entire upper chamber.[7]

Yet it was inevitable that the southeastern black belt should control early State legislatures, for this region was the oldest and most thickly settled, and its plantation agriculture was the dominant interest of Louisiana. Such an apportionment of legislative seats, as well as a propertied franchise, was all that could be expected of a constitutional convention, over half of whose members were conservative, well-to-do Creoles, and of whom less than a fifth came from north of Red River.[8]

But it was equally inevitable that these constitutional provisions would prove a strait-jacket to a State growing as fast as Louisiana. When population doubled between 1810 and 1820, and again in the next two decades,[9] the newcomers did not find themselves adequately represented in the General Assembly. By 1843, the piney woods parishes of northern Louisiana were out-voted three to one in the lower house by the southeastern rural black belt, although the latter now exceeded the former in white population by only two to one.[10] The wealthy, slaveholding, cotton and sugar parishes had a preponderance in legislation that was no longer justified by their population. What gave them even greater political weight, and caused more discontent on the frontier, was the propertied franchise.

A government so aristocratic in principle and practice was hardly to the liking of a generation that put Andrew Jackson in the White House. What had appeared just to people in 1812 came to seem grossly unjust as early as 1830. The legislature, because of its apportionment and property qualifications, had been "virtually an Aristocracy" from the beginning;[11] and elections, because

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[7] *Ibid.*, Art. II, sec. 10; Schedule, sec. 8. *cf. Niles' Weekly Register*, I (Jan. 25, 1812), 388; VI (Aug. 6, 1814), 393.

[8] *Niles' Weekly Register*, IV, 431.

[9] *Eleventh Census, 1890*, pt. i, p. xxxviii.

[10] Computed from the *House Journal, 1843*, p. 5, and *Journal of the Proceedings of the Convention of . . . 1845* (New Orleans, 1845), opp. p. 56.

[11] J. W. Windship to Wm. Plumer, Jr., Apr. 2, 1814, in E. S. Brown, ed., "Letters from Louisiana, 1813-1814," *Mississippi Valley Historical Review*, XI (March, 1925), 575. These letters present an excellent picture of early Louisiana politics.

of exclusive suffrage ,had at last "become a sort of monopoly."[13] The Jacksonian farmers, who were migrating from the Southeastern States to Louisiana in growing numbers every year,[13] hated all monopolies, and none so bitterly as a monopoly of the franchise and elections. Manhood suffrage and popular control of government were the first articles in a civic creed that enlisted their faith as fervently as religion.[14] To obtain these democratic rights, men of their way of thinking had already revised State constitutions in the conservative East,[15] and now in Louisiana they demanded that the constitution of 1812 be brought up to date. This movement was led by Solomon W. Downs of Ouachita, a lawyer and planter from Tennessee and Kentucky, who built up the "Red River Democracy" as a spearhead of reform.[16] Twice in the eighteen-thirties, however, a Whig Senate rejected the calls of the House for constitutional revision, and when at last the upper chamber was won over, the Governor interposed his veto.[17]

But every defeat suffered by the Democratic advocates of constitutional reform only served to postpone what was inevitable. Even the Whigs, who feared that any political change would amount to revolution,[18] conceded the necessity of banking amendments after the panic of 1837,[19] and climbed on the bandwagon of reform lest it run away without them. [20] In 1841, therefore, Governor Roman signed a resolution for a convention to modify the organic law in the direction of greater democracy.[21]. The proposed extension of popular government was beyond question the main reason why Whigs had opposed and Democrats favored revision;[22] and it accounted for the overwhelming endorsement of the belated convention at the polls. Twice, as required by their old constitution, the people breached the dikes of Whiggery and voted to reform

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[13]Bernard Marigny, speaking in the *Proceedings and Debates of the Convention of . . . 1845* (New Orleans, 1845), p. 105.

[13]*Biographical and Historical Memoirs of Northwest Louisiana* (Chicago, 1890), pp. 109-110; D. W. Harris and B. M. Hulse, *History of Claiborne Parish* (New Orleans, 1886), p. 21.

[14]C. Lyell, *A Second Visit to the United States of North America* (New York, 1849), II, 125-6; C. R. Fish, *The Rise of the Common Man, 1830-1850* (New York, 1927), passim; F. J. Turner, *The United States, 1830-1850* (New York, 1935), pp. 20, 24-6.

[15]J. B. McMaster, *A History of the People of the United States* (New York, 1910), V. ch. 1; VII, ch. lxxiv.

[16]*New Orleans Weekly Delta*, Aug. 27, 1854 (New Orleans newspapers are hereafter cited without reference to the city); C. Lanman, *Dictionary of the United States Congress* (Philadelphia, 1859), q.v.; M. M. Ruffin and L. McLure, "General Solomon Weathersbee Downs," *Louisiana Historical Quarterly*, XVII (Jan. 1934), 10-11, 14.

[17]J. K. Greer, "Louisiana Politics, 1845-1861," *Louisiana Historical Quarterly*, XII (July, 1929), 409.

[18]*Bee*, Nov. 20, 1844, quoted by Greer, *op. cit.*, p. 410.

[19]J. S. Kendall, *History of New Orleans* (Chicago, 1922), I, 143.

[20]*St. Landry Whig*, July 17, 24, 1845.

[21]*Senate Journal, 1841-43*, pp. 10-16, 22, 31-2. The proposed amendments called for changing suffrage qualifications, without saying how, adjusting legislative representation to population, allowing the election of governors without legislative choice between the highest candidates, and enlarging the jurisdiction and membership of the Supreme Court.

[22]*Southern* (Jefferson) *Traveller*, June 19, 1844.

the property-holders' government that had ruled them since 1812. In many parishes of northern Louisiana not ten votes were cast in favor of the old order, and the common people rose up in revolt wherever they were numerous.[23] It was natural, therefore, that they should elect to seats in the convention twice as many Democrats as Whigs;[24] the party which had always befriended reform was preferred to the party that had so long opposed it.

The convention of 1845 threw aside the old constitution and wrote a new one,[25] which became the fundamental law that all later conventions took as the basis for their work of revision.[26] In many ways it was a remarkably democratic document: in some provisions, as in the abridgement of legislative power, the multiplication of local elective offices, and the prohibition of monopolies, special charters, and incorporated banks,[27] it reflected the spirit of Jacksonian Democracy;[28] in certain safeguards, like the limitation placed upon State debts,[29] it revealed the lessons taught by the panic of 1837; and in other measures, such as the establishment of free public education and the protection of civil liberties,[30] it revived the spirit of Jeffersonian Democracy.[31]

But the most important reform accomplished by this convention was the abolition of all property tests for voters and office-holders.[32] These restrictions were swept away when Democrats from the northern and central parishes voted against Whigs from New Orleans and the southern parishes to omit the old requirement that gubernatorial candidates should own estates worth at least $5,000.[33] If no property qualification was to be demanded of the Governor, it followed as a matter of course that none should be required of legislators.

Both parties agreed to abolish the propertied franchise, but not for the same reasons. Democrats opposed tax-paying qualifications as bad in principle, "measuring mind by dollars and cents," and declared that "if man can *think* without property, he can *vote* without property."[34] "Place all citizens upon a footing of perfect

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[23] 13,396-4,030 in 1842, *Senate Journal, 1843*, p. 10; and 11,229-2,767 in 1843, *Journal de la Chambre des Representans, 1844*, pp. 12-13.
[24] *Southern* (Jefferson) *Traveller*, July 20, 1844.
[25] *Journal*, p. 16.
[26] Except the Reconstruction convention of 1868. See Evans, *op. cit.*, p. 33.
[27] *Constitution of 1845*, Arts. 5, 25-6, 82-3, 117-18, 122-5.
[28] *cf.* C. E. Merriam, *A History of American Political Theories* (New York, 1924), ch. v.
[29] *Constitution of 1845*, Arts. 113-14, 121.
[30] *Ibid.*, Arts. 105-111, 133-39. See also the *Debates*, pp. 96-7, 111-12.
[31] *cf.* G. Chinard, *Thomas Jefferson*, (Boston, 1933), pp. 82-3, 95-7.
[32] *Constitution of 1845*, Arts. 6, 10, 12, 18, 39.
[33] *Journal*, p. 63. The vote was 38-28. Party affiliations of the convention delegates are given in the *Southern* (Jefferson) *Traveller*, July 20, 1844.
[34] *Debates*, pp. 106-107.

equality as to their political rights," said one Democrat, "and you will promote the well-being and happiness of all."[35] This was the philosophy of the Declaration of Independence and the genius of American institutions, others agreed.[36] The Democrats believed that property should not remain the basis of suffrage because the personal rights and liberties of citizens were paramount. To timid Whigs their retort was that property could always take care of itself.[37]

This growing belief, that the economic power of property was sufficient to protect itself politically without limiting the franchise, was one of the reasons why Whigs abandoned their traditional insistence upon a propertied electorate and came to agree with the Democrats that they had nothing to fear from white manhood suffrage. "There is no danger from the poorer classes," General Downs, the Democratic leader, assured members of the convention. The poor "have always been the defenders and protectors of the property of the rich, and will ever be so. . . . Property and money are power, and will always exercise a sufficient control over the poor, without denying to them a voice in the administration under the plea that they are the rabble—poor devils. . . . There is no necessity, no true wisdom, in degrading the poorer classes and placing them on an equality with slaves, by denying them the most important privilege of freemen." Again and again Downs insisted that "property . . . is an element of power, and will and can defend itself . . . (It) will not only be safe, by leaving suffrage unrestricted, but it will become safer. . . . In none of the States, where suffrage is free, have property holders suffered."[38]

Although not every Whig subscribed to this sort of "Bunkum,"[39] and many still adhered to their ancient faith that those who paid taxes should levy them,[40] the majority nevertheless appeared ready to admit that property qualifications had been too often fraudulently satisfied to be of any further use in restricting suffrage.[41] It was well known, for example, that in recent elections both parties had circumvented the tax-paying test of the old constitution. Judah P. Benjamin had converted the cab-drivers of New Orleans into Whig voters by issuing 1,500 licenses in 1842, and John Slidell had turned the tide for the Democrats in 1844 by

[35] *Ibid.*, p. 99.
[36] *Ibid.*, pp. 96-7, 111-12.
[37] *Ibid.*, 110, 112.
[38] *Ibid.*, pp. 116, 118. See also Miles Taylor, *ibid.*, p. 125.
[39] *Ibid.*, p. 100.
[40] *Ibid.*, p. 123.
[41] *Ibid.*, pp. 105, 108, 886.

shipping down the River to Plaquemines, to vote a second time, two steamboats full of Irishmen.[42]

Remembering these evasions of a property test for suffrage, and mindful that "social progress" and the people demanded its abolition,[43] the convention voted down almost unanimously the substitution of a poll tax,[44] and resorted instead to extending the requirement for residence from one to two years.[45] In this way members of both parties, from city and country alike, hoped to protect their interests from the thousands of foreigners who were pouring into New Orleans.[46] Country members were afraid that agriculture would suffer if these immigrants could be herded to the polls by city merchants;[47] but the merchants themselves were no less afraid that so many foreign voters would come to hold the balance of power between their own rival factions and parties.[48]

The Whigs, already stricken by the plague of Native Americanism that was to prove their mortal disease,[49] were especially hostile to foreigners, partly because they became Democrats,[50] and partly because they were a propertyless "rabble, the dissolute and the vicious: the pauper and the ignorant,"[51] suspected of covert Free Soil sympathies.[52] They fill the Charity Hospital, declared one Whig, and threaten to "take our bed, and eat up our dinner!" cried another.[53] Immigrants, whether foreign or American, had no understanding of local institutions, no stake in the country, and yet might "turn the scale at the ballot box."[54] But no requirement of residence, however long, would bar them from the polls, warned a clairvoyant Whig, because they could swear as falsely to having lived in Louisiana two years as one.[55] It was nevertheless agreed by a coalition of Whigs and Democrats—from New Orleans and the southern parishes—that no better guarantee of the existing

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[42] *Journal of the Special Committee of the (Louisiana) House of Representatives to Investigate the Frauds Perpetrated in the Late Presidential Election* (New Orleans, 1845), passim; P. Butler, *Judah P. Benjamin* (Philadelphia, 1907), pp. 66-8.

[43] *Debates*, pp. 106, 109.

[44] *Journal of the Convention*, p. 152. The vote was 49-12. See also the *Debates*, p. 886.

[45] *Debates*, p. 95; *Journal*, p. 343; *Constitution of 1845*, Art. 10. The vote was 44-23.

[46] *Debates*, pp. 99, 127.

[47] *Ibid.*, pp. 108-109.

[48] *Ibid.*, p. 105. The city delegation favored longer residence 10-1. See *ibid.*, p. 127.

[49] See below, and G. M. Stephenson, "Nativism in the Forties and Fifties, with Special Reference to the Mississippi Valley," *Mississippi Valley Historical Review*, IX (Dec. 1922), 185-202; W. D. Overdyke, "History of the American Party in Louisiana," *Louisiana Historical Quarterly*, XV, XVI, (1932, 1933), passim.

[50] A. O. Hall, *The Manhattaner in New Orleans*, (New York, 1851), pp. 35-6; Greer, "Louisiana Politics, 1845-1861," *Louisiana Historical Quarterly*, XII, 387n.

[51] *Debates*, p. 124.

[52] J. F. Jameson, ed., *Correspondence of John C. Calhoun* (American Historical Association, *Report* of 1899), II, 1188-90.

[53] *Debates*, pp. 100, 105.

[54] *Ibid.*, pp. 99, 112.

[55] *Debates*, p. 112. See the *Bee*, Nov. 5, 7, 1855, for charges of wholesale illegal naturalizations.

order could be found than to exclude the votes of all immigrants for two years after their arrival, whether they were foreigners or Americans.[56]

This innovation was fought in vain by a solid phalanx of Democrats from northern Louisiana, where American farmers coming from the Southeastern States would suffer temporary disfranchisement.[57] Their representatives contended that it was revolutionary to add a year to the term of residence required by the old constitution, under which delegates to this convention had been elected. Immigrants had made Louisiana what it was, and therefore had as much right as natives to a voice in its government.[58] But no Whig, whether he was a Creole or American, listened to these arguments. Together with wealthy Democrats, they were mortally afraid of what poor foreigners and emigrant farmers might vote to do. And they had gone far enough on the democratic tide of liberalism, so they thought, when they consented to the abolition of a propertied franchise.[59]

This reform, however, worked little change. It enlarged the electorate by only a third of the number voting under the old constitution. Worst of all, it left the franchise of ante-bellum Louisiana in the hands of two-fifths of its adult freemen.[60] Probably half these voters were slaveholders, because this class seldom failed to attend elections, and the total number of slaveholders in the State was equal to over half the votes cast in every contest before 1860.[61] Louisiana, in other words, was controlled even at the polls by a slaveholding minority of its population.

The majority of non-slaveholders either could not or would not vote.[62] In the country, "mechanics, artizans and overseers" were often unable to qualify for the franchise, even by a year's residence, because they moved around too often in search of employment.[63] Hunters, fishermen, and many poor farmers in the back-woods either lived too far from polling-places or were too indifferent to go to them.[64] In New Orleans hardly seven per cent

[56] *Senate Reports, 1850*, p. 31.
[57] *Debates*, pp. 103-104, 127.
[58] *Ibid.*, p. 127.
[59] *Debates*, pp. 98, 112-13, 127.
[60] *Ibid.*, pp. 104, 853, 855.
[61] *cf.* the vote in the presidential elections of 1844 and 1848 with estimates of free adult population, *Seventh Census, 1850, Compendium*, pp. 45, 48, 50.
[62] If all slaveholders voted, for example, they cast fifty-eight per cent of the ballots in the presidential election of 1848, fifty-seven per cent in 1852, and—the lowest proportion at any time—forty-four per cent in 1860. Computed from the *Seventh Census, 1850, Compendium*, pp. 50, 95; *Eighth Census, 1860, Agriculture*, p. 230; and the *Crescent*, Dec. 4, 1860.
[63] *cf. Crescent*, Dec. 22, 1856.
[64] Lafourche, for example, with a white population of 1,857 men over twenty years of age, cast 1,047 votes in 1860. *Eighth Census, 1860, Population*, pp. 188-9; *Crescent*, Dec. 4, 1860. *cf.* also, Assumption, Ascension, St. Mary, Tensas, and Winn.

of the white people were registered voters,[65] and one-third of this small electorate was sometimes kept away from the polls by acts of violence and intimidation[66]—generally directed against those who were immigrants.[67] In spite of nominal manhood suffrage, therefore, Louisiana was not a democracy, because the majority of its free population was out-voted by the active slaveholding minority.

As if this plurality was not sufficient to protect their property, the slaveholders, merchants, and lawyers arranged representation in the legislature to increase the preponderance that they enjoyed at elections. But on this question, as on so many others, they were divided by the conflicting interests of city and country, commerce and agriculture.[68] Each wanted a greater voice in legislation than the other; and to obtain it, each wanted representation to be based on what the other fell short of—the country on slaves, the city on voters.[69] In an effort to reconcile them, the Democratic leader, General Downs, abandoned the electoral basis of the old constitution and proposed the Federal ratio, by which three-fifths of the slaves would be counted in addition to the free population.[70]

But this proposition was bitterly attacked by Christian Roselius and the New Orleans Whigs. They charged that it would enable the country to gain control of the legislature at the expense of the city which paid two-thirds of the State's taxes.[71] From their point of view the country had already been given too much representation by the guarantee that each parish, regardless of population, should have at least one representative.[72] Now to count three-fifths of the slaves was not only to assure the predominance of rural parishes but also to favor their slaves above other kinds of property to be found in the city.[73] What the urban Whigs preferred was representation on the basis of all taxable property, and failing that, the qualified electorate.[74] In reply to their charges, General Downs contended that New Orleans had too long ruled the

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[65]Computed from data for the apportionment of 1859 in the *Report of the Secretary of State, 1859*, passim, and *Session Laws, 1859*, Act No. 7, pp. 7-9.

[66]*Message of Governor Wickliffe to the General Assembly, 1857*, p. 16. Half the citizens of New Orleans had always abstained from voting, admitted the *Picayune*, Dec. 3, 1862.

[67]e. g., *Bee*, Nov. 5, 7, 1855. See Greer, "Louisiana Politics, 1845-1861," *Louisiana Historical Quarterly*, XIII, 81-2, 87, 277n.

[68]*Debates*, p. 109.

[69]*Picayune*, Feb. 1, 1845.

[70]*Debates*, p. 313.

[71]*Picayune, loc. cit.*; *Bee*, Feb. 18, 1845.

[72]*Constitution of 1845*, Art. 8.

[73]*cf.* Greer, "Louisiana Politics, 1845-1861," *Louisiana Historical Quarterly*, XII, 412-13.

[74]*Journal*, p. 139.

State. He would be fair to the city, however, for even under his Federal ratio, nearly half of all the representatives would come from New Orleans.[75]

Yet he failed to answer Democratic colleagues who attacked his proposal as fiercely as the New Orleans Whigs, strangely enough, but on entirely different grounds. The Federal ratio, they declared—impugning the famous compromise of the national Constitution as well as Downs' copy of it—was "unjust . . . unequal, and operated exclusively in favor of the rich. . . . It would be repugnant to the true principle of democracy to say, that a farmer without slaves, working on his own farm, should have less weight in the government than the rich proprietor adjoining his little farm, who had a hundred negroes (and was entitled to representation for sixty of them). They are all citizens alike (farmers and proprietors), whether rich or poor. . . . I never imagined," concluded the most eloquent of the delegates opposing the Federal ration, "that the poor would be placed upon an equality with negroes—and that representation would be claimed for the latter upon the same principle that it is accorded to freemen, to wit: that poor white people performed the menial services required of our slaves! That may be true, . . . but I think there is a vast difference between the one and the other."[76] There were not many delegates to defend the poor white, it is true, but there were enough representatives of non-slaveholding farmers to help the Whigs defeat Downs' proposal of a Federal ratio.[77]

In its place the convention adopted a compromise which satisfied slaveholders in the country, by apportioning senatorial seats on the basis of total population, but limiting New Orleans to one-eighth of the membership, and placated merchants and lawyers in the city, by continuing to apportion the lower chamber according to the qualified electorate.[78] What was charged at the time, and would seem to be confirmed by convention roll-calls,[79] is that this compromise was made by a coalition between the black belt and the city.[80] It was not what they most desired, but rather the best that they could get. New Orleans and the south did lose con-

[75] *Picayune*, Feb. 1, 2, 1845.
[76] *Debates*, pp. 315-16.
[77] *Journal*, p. 112. The vote, with many delegates judiciously absent, was 29-22.
[78] *Constitution of 1845*, Arts. 8, 15, 16.
[79] The representatives of New Orleans voted with the black belt. They stood unanimously for making property the basis of senatorial representation, and against striking out total population as the mode finally adopted. They also voted, 8-3, for apportioning the lower chamber according to electors, and 10-1 against doing likewise with the upper chamber. See the *Journal*, pp. 83, 139, 155, 167.
[80] *Debates*, p. 568. Downs evades this charge, *ibid.*, p. 579.

siderable representation, to the greater gain of northern Louisiana; but the Federal ratio was defeated, and also the old electoral basis for *both* chambers. The resulting compromise gave New Orleans the balance of power in the lower house, where it controlled a quarter of the membership,[81] and the conservative black belt a majority in the upper house sufficient to veto legislation hostile to the interests of slaveholders.

Comparison of representation in both chambers shows that a majority of the white people ruled the House, and a minority, most of whom were planters, the Senate. The black belt of twenty-eight parishes, inhabited by a third of the white people, elected over two-fifths of the representatives. The white belt of eighteen parishes, where two-thirds of the white people and fifty-six per cent of the voters lived, elected over half of the representatives.[82] It is apparent that the membership of the lower chamber exactly represented the active electorate in each section, as was to be expected from its electoral basis; but the free population, although in control of the House, did not have the representation to which it was entitled on a democratic basis. In the Senate, however, the disproportion was even more striking. Here the black belt controlled three-fifths of the members, and also influenced others by deciding their election in districts where two black belt parishes were grouped with one from the white belt.[83]

With the conservative black belt over-represented, and the active electorate confined to slaveholders and men of some property, not much can be said for the other democratic reforms of the convention of 1845. Suffrage and representation determine what republican government can do: in Louisiana it could do nothing harmful to the interests of the slaveholding minority of the population. Yet the constitution of 1845 was so much more liberal than the one it replaced that the people gave it their overwhelming approval.[84]

Only the mercantile interests of New Orleans remained dissatisfied. Although the city ratified the constitution, the vote was surprisingly small—one of resignation rather than approval.[85] For Democrats had defeated Whigs, and realty had beaten personalty

[81] *Constitution of 1845*, Art. 143.

[82] Computed from data for the apportionment of 1848 in the *Senate Journal, 1848*, pp. 81, 88-9.

[83] e. g., Caddo and De Soto with Sabine; Ouachita and Morehouse with Union.

[84] *Weekly Delta*, Dec. 1, 1845. The State vote was 12,277-1,395.

[85] 1,760-401. *Jeffersonian*, Dec. 1, 6, 1845. The city vote in the presidential election of 1844 totalled 8,638. Convention delegates from New Orleans, it should be remembered, voted against the adoption of the constitution. See the *Journal*, p. 325.

interests in the convention.[86] However conservative the Democrats had proved themselves to be in political reforms, there was no question of their Jacksonian agrarianism. The panic of 1837 had taught them a lesson: the State debt was heavy, and banks still in distress.[87] They had resorted, therefore, to the simple remedy of drastically limiting the State's right to borrow money, forbidding public loans to internal improvement companies, and absolutely prohibiting the charter of banks, as well as restricting the life of all corporations to twenty-five years.[88] Against these agrarian taboos the New Orleans Whigs had fought in vain.[89]

Now the commercial interests found themselves in a constitutional strait-jacket. They could neither attract capital nor build railroads.[90] "What instance is there in the history of the Anglo-Saxon race of an inhibition to embark in an enterprize requiring over five hundred thousand dollars capital?" asked the railway promoter, James Robb. "And, yet," he was forced to reply, "such is the anomalous situation of Louisiana."[91] With the mounting prosperity of the Fifties, and the growing need for railways, personalty interests moved swiftly to free themselves from the agrarian restrictions of the constitution of 1845.[92] Having made revision of the organic law their platform, the Whigs carried the State election of 1851.[93] They at once submitted to the people a resolution for another convention,[94] which met with great popular approval.[95]

The people desired constitutional changes not so much to help personalty interests, however, as to extend the democratic political reforms of 1845. They were not satisfied with the progress made by the last convention, and demanded that the judiciary and all executive officers be elected rather than appointed, and that the residence required for voting be reduced to one year.[96] All these reforms had been proposed as constitutional amendments by the

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[86] *Journal*, pp. 242, 266.

[87] *Debates*, p. 125.

[88] *Constitution of 1845*, Arts. 113-14, 121-5.

[89] *Journal*, pp. 242, 266.

[90] *On Extending the Commerce of the South, etc.*, (letters and speeches of the New Orleans Railway Convention, 1852), pp. 51-2; *Address of the Board of Directors of the New Orleans, Opelousas, and Great Western Railroad to the Property Holders of . . . New Orleans* (New Orleans, 1852), p. 11.

[91] *Proceedings of the Adjourned Meeting of the New Orleans, Algiers, Attakapas and Opelousas Railroad Convention* (New Orleans, 1852), p. 8.

[92] *True Delta*, May 12, 1852. See also the opinion of the Supreme Court in *Police Jury v. McDonough*, quoted by Evans, *A Study in the State Government of Louisiana*, pp. 33-4.

[93] *Weekly Delta*, Oct. 27; Nov. 24, 1851.

[94] *Session Laws, 1852*, Act No. 73.

[95] *True Delta*, Apr. 13, 1852. The vote in New Orleans was 5,490-171.

[96] *Crescent*, Dec. 8, 1851. See also the newspapers quoted by Greer, "Louisiana Politics, 1845-1861," *Louisiana Historical Quarterly*, XII, 595.

Democratic legislature,[97] only to be stolen by the Whigs as a popular cloak for their own designs. The result was that the people expected democratic reforms of a convention that the Whigs promoted primarily for capitalistic reform.[98] Because the Whigs led the way in calling a convention, and fought for it on straight party lines,[99] while the Democrats were content with the slow process of amendment, and took no stand on economic issues,[100] the people filled two-thirds of the convention seats with Whigs.[101]

And these Whigs did not fail to take advantage of their opportunity to undo the agrarian Democratic restrictions of 1845. "We now have it in our power to place Louisiana beyond the reach of Locofocoism and to retain its government in our hands for years to come," they exclaimed as the convention of 1852 opened.[102] Under the efficient leadership of Judah P. Benjamin, they proceeded first to grant the commercial interests everything they wanted, and then to make changes in representation that might perpetuate the power of Whiggery.

In many of their economic reforms, which they carried against the opposition of northern Louisiana,[103] the Whig delegates were simply voting themselves favors. Among the members were to be found directors and large stockholders of the two leading railways,[104] who were seeking State aid,[105] and equally large stockholders in the Citizens' bank,[106] who sought to save what the Democrats called their "shin plaster mill."[107] It was, as one newspaper said, a speculators' convention.[108] They knew what they wanted, and by changing the constitution they were able to get it from the legislature.[109] Limitation of the State's capacity to borrow money was wiped out; public subscriptions to internal improvement companies were authorized; and the General Assembly was empowered to charter conservative, specie-paying banks by special or general laws.[110] The convention repealed, by omission,

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[97] *Senate Journal, 1852*, p. 24; *Session Laws, 1852*, Act No. 24, pp. 14-15.

[98] *True Delta*, May 12, 1852; *Crescent*, Nov. 15, 1852; *Southern Democrat*, quoted in *Baton Rouge Daily Comet*, Sept. 8, 1852.

[99] Butler, *Judah P. Benjamin*, p. 103.

[100] *Picayune*, Nov. 2, 1851; L. M. Sears, *John Slidell* (Durham, N. C., 1925), p. 85.

[101] *Baton Rouge Gazette*, June 26, 1852; *Picayune*, July 10, 1852. There were 85 Whigs and 45 Democrats.

[102] *Baton Rouge Gazette*, July 10, 1852.

[103] *Journal of the Convention . . . of 1852* (New Orleans, 1852), pp. 70, 73, 78-80.

[104] *cf. ibid.*, p. 3; *List of Stockholders of the New Orleans, Opelousas and Great Western Railroad Company* (New Orleans, 1852), pp. 1-31; *Southern and Western Rail-Road Convention* (New Orleans, 1852), pp. 2-3.

[105] *Journal*, p. 72.

[106] *Ibid.*, pp. 46, 80; *True Delta*, Sept. 12, 1852.

[107] *Jeffersonian*, Feb. 12, 1847.

[108] *Southern Democrat*, quoted in the *Baton Rouge Daily Comet*, Sept. 8, 1852.

[109] e. g., *Session Laws, 1853*, Acts Nos. 176-7, 231, pp. 141-3, 195-7; *Senate Debates, 1853*, p. 37.

[110] *Constitution of 1852*, Arts. 109-11, 118.

the articles of 1845 which limited the life of corporations to twenty-five years and prohibited monopolies.[111] Most amazing of all constitutional provisions was one that salvaged the Citizens' Bank, confirmed previous acts in its behalf that were thought to be unconstitutional, and exempted it from the safeguards of note registry and specie redemption to be required of all other banks.[112] Small wonder that the farmers of northern Louisiana thought the Whigs wanted "banks to steal the money of the people, and . . . railroads to run away with it."[113]

It was strange, and did not escape notice at the time, that the same delegates who saved the Citizens' Bank also led in changing the basis of legislative representation to one of total population.[114] Their black belt parishes stood to gain by both measures, for they held over half the Bank shares and would now control a majority of the legislature. This was not an accident, claimed the *True Delta*, because legislative control was essential to the future safety of the Bank.[115]

The connection between this Bank and the new basis of representation was slight, however, compared to the perfect community of interest that existed between Whig planters from the black belt and Whig merchants and lawyers from New Orleans.[116] Nor is it surprising that they struck an alliance, for both groups had surplus funds to invest, one in land and slaves, the other in banks and railways;[117] and their mutual welfare consequently depended on sufficient captial and sound enough banks to finance the expansion of plantations and the building of railways.[118] Each group needed the other's assistance, moreover, to hold off the flood of paper money that threatened to submerge them, and also to put a stop to the agrarian legislation of 1845.[119] "I am a believer in the sacred and inalienable rights of property," declared James Robb, whose sentiments most Whigs echoed, "(and I believe) that the practical character of every government is the result of a state of property."[120] So the object of the Whigs in changing legislative representation was not to make secure a single Bank, but to revive

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[111] *cf. Constitution of 1845*, Arts. 123-5.
[112] *True Delta*, Sept. 12, 1852; *Constitution of 1852*, Art. 121.
[113] *Delta*, Oct. 24, 1852.
[114] *True Delta*, Sept. 12, 1852. Benjamin and Roman were the authors of both provisions. See *Journal*, p. 46; Butler, *op. cit.*, p. 110.
[115] See table of parishes, their population and Bank shares, in the *True Delta*, Sept. 12, 1852.
[116] *Journal*, pp. 67-8, 79, 82. This combination, dominated by the sugar planters, controlled the Second Congressional District.
[117] *Senate Debates, 1853*, p. 120.
[118] *Picayune*, Dec. 26, 1852.
[119] *Senate Debates, 1853*, pp. 121-3.
[120] *On Extending the Commerce of the South, etc.*, p. 72.

their party and erect a bulwark for all property, personal no less than real.[121] They were not alone, of course, in their ambition to safeguard property by this device, for many Democrats followed their leadership.[122]

Although the new method of representation failed to restore the Whig party to its old ascendancy,[123] largely because the national party was already moribund,[124] it nevertheless succeeded in transferring control of the legislature from the people to property. To award legislative seats on the basis of total population was to count all slaves, and consequently to give the greatest representation to large slaveholders. So undemocratic a principle had been first applied, it will be recalled, to the Senate in 1845, and was now extended to the lower House, where it replaced the apportionment of seats according to voters.[125] This new method of representation, charged the *True Delta*, gave control of the State to one-third of its population,[126] and put the planting aristocracy firmly in the saddle.[127]

This was no exaggeration. In 1854, the black belt, which included three more parishes and two per cent more voters than in 1848, added to its seats in the lower House by six per cent, and came into control of both branches of the legislature by a scant majority.[128] The black belt's plurality was increased to a comfortable margin in the apportionment of 1859: on the eve of secession the white belt was reduced in its representation to less than half the legislature, although it was inhabited by two-thirds of the free people and half of all the voters in the State.[129] If this disparity of representation between white and black parishes should appear slight in view of their almost equal division of the active electorate, it would be well to remember that in the black belt twice as many people went to the polls as in the white belt.[130] Hence the injustice of the black belt's legislative preponderance should be weighed according to its small free population, and not

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[121] *Baton Rouge Gazette*, July 10, Nov. 6, 1852; Butler, *Judah P. Benjamin*, p. 110. On a basis of total population, Whigs boasted that they could control the Legislature and rule the State for thirty years to come. See Greer, "Louisiana Politics, 1845-1861," *Louisiana Historical Quarterly*, XII, 598-9.

[122] *True Delta*, Aug. 17, 27; Sept. 2, 1852.

[123] *Baton Rouge Gazette*, Dec. 11, 1852. Over half the parishes failed to send delegates to the Whig State Convention four months later.

[124] Butler, *loc. cit.*

[125] *Constitution of 1845*, Art. 15; *Constitution of 1852*, Art. 8.

[126] Nov. 8, 1852.

[127] Aug. 17, 1852.

[128] Computed from data for the apportionment of 1854 in the *House Journal, 1854*, pp. 25-6, and the *Senate Journal, 1854*, p. 26.

[129] Computed from data for the apportionment of 1859 in the *Report of the Secretary of State, 1859*, passim, and *Session Laws, 1859*, Act No. 7, pp. 7-9.

[130] *Loc. cit.*

its voters. Moreover, if black and white belts are compared in similar parts, rather than as a whole, the legislative advantage of large slaveholders over small and non-slaveholders is seen in its true disproportion. For example, thirteen black parishes elected nearly three times as many representatives as six white parishes, although there was a difference of but 500 in their free population;[131] and twelve colored parishes chose as many legislators as twenty white parishes with double the number of free inhabitants.[132] Other invidious comparisons were drawn by the press of the day.[133] But no more illustrations seem necessary to establish the fact that through representation according to total population a slaveholding aristocracy ruled Louisiana before the Civil War. Other Southern States, it is true, were also governed by this class, but nowhere else were slaveholders able to control legislation through the representation of their slaves.[134]

It required sharp parliamentary tactics, of course, to write so unpopular a device into the constitution. The convention of 1852, like that of 1845, was confused by a conflict of sectional ambitions. While black belt parishes desired to count their slaves,[135] the city and rural white belt wanted to count only voters.[136] Yet on the electoral basis, the rural parishes, white and black alike, were afraid that New Orleans would eventually gain control of the legislature;[137] and they moved, therefore, that no parish should be entitled to more than a quarter of the seats in the lower House.[138] A majority of the city delegates, frightened by this restriction of their future representation,[139] deserted the rural white belt, abandoned the electoral plan, and cast their votes with the black belt for total population without parish restrictions.[140] Although some city members knew that by counting slaves the black belt would win legislative ascendancy, the majority were confident that the time was not far off when even on this basis New Orleans would outnumber the black belt because of its heavy immigration.[141]

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[131] *cf. Session Laws, 1859*, pp. 7-9, and *Eighth Census, 1860, Preliminary Report*, p. 262. The black belt parishes cited above are Bossier, Carroll, Concordia, East and West Feliciana, Iberville, Madison, Pointe Coupée, St. Charles, St. James, St. Mary, Tensas, and West Baton Rouge; the white belt parishes are Bienville, Claiborne, Jackson, Sabine, Union, and Winn.

[132] *True Delta*, Sept. 2, 1852.

[133] *Ibid.*, Aug. 15, 22, 1852.

[134] *Ibid.*, Aug. 17, 1852; *House Journal, 1853*, p. 64.

[135] *Journal of the Convention*, p. 46.

[136] *Ibid.*, p. 64. The vote was 59-51, and then 56-55.

[137] *True Delta*, June 9, 1852.

[138] *Journal*, p. 63. The vote was 75-34.

[139] *Ibid.*, p. 66; *Crescent*, Nov. 8, 1852.

[140] *Journal*, pp. 65-6. Of twenty-eight city delegates, eighteen voted for total population, and upon their ballots depended its adoption. *True Delta*, Aug. 15, 1852.

[141] *Journal*, p. 66; *True Delta*, Aug. 15, 1852, and *Crescent*, Nov. 8, 1852.

This parliamentary deal, by which city merchants and lawyers joined hands with black belt planters to force slave representation upon the poorer white parishes, seems at first thought to be the old story of sectional politics. But it was more than a conflict between city and country, or commercial and agricultural interests, for the country itself was divided,[142] and in the nature of its division is to be found the economic interest that lay at the bottom of most sectional politics. "The wealthy class of planters" from the black belt had no economic connection with "settlers in the remote frontier parishes."[143] But they were bound by every tie of self-interest to their factors and lawyers in New Orleans.[144] This was the conservative alliance of wealth, personal and real, urban and rural, that dominated Louisiana through the legislative representation of slave property.[145]

Against such domination, and the device by which it was secured, there arose fierce protests from the poorer parishes and the majority of people.[146] Members of the convention of 1852 declared that slave representation destroyed "the essence of republicanism," which was the political equality of all freemen, because it placed "the African and the white man on a level," based representation on property rather than numbers, and transferred all power "into the hands of the large slaveholders, thereby stamping upon this Government the odious principles and character of an aristocratic Government."[147] Slave representation was attacked as "a deliberate conspiracy to confer upon property (political) rights;" and it was said that the freemen of Louisiana would never "be reconciled to any system by which political power is to be transferred from their hands to those of men owning large gangs of slaves."[148]

This attack against slave representation as government by slaveholders was soon translated into a popular but groundless condemnation of "nigger rule." The economic issue, for the first but not the last time, was beclouded by race prejudice. It would fan the flames of class conflict to go on denouncing the new constitution as the bulwark of realty and personalty interests; safer,

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[142] *Delta*, Aug. 7, 1852.
[143] *True Delta*, Aug. 15, 17, 1852; *Delta*, Aug. 7, 1852.
[144] *Baton Rouge Gazette*, May 22, 1852; *Weekly Gazette* and *Comet*, Dec. 6, 1858.
[145] Observe the vote for exempting homesteads from taxation, *House Journal, 1852*, p. 147, *Senate Journal, 1852*, pp. 175-6, and for public aid to railways, *Crescent*, Feb. 23, 1857.
[146] *Picayune*, Oct. 24, 1852.
[147] *Journal*, pp. 53, 66, 99-100.
[148] *True Delta*, Aug. 13, 1852. See also *ibid.*, Nov. 26, 1852, and *Crescent*, Nov. 8, 1852.

then, to attack the slave than the slaveholder.[149] So the *True Delta* led the rural press in lampooning the "negro-good-as-a-white-man Constitution,"[150] and country editors in the white belt whipped up racial antagonism between non-slaveholders and slaves.[151] "Gosh, nigger, we's equal to them poor white folks in Catahoula," were the words one rural editor attributed to a slave. "They vote, but they don't elect nobody, and our masters vote for us, and elects a member of the legislator."[152] "Anti-nigger Constitution meetings" were held all over northern Louisiana;[153] and with few exceptions, the parishes in this section voted against the adoption of the new constitution.[154]

The State as a whole, however, ratified the document by a small majority.[155] Most of the black belt parishes liked the prospect of slave representation,[156] and New Orleans looked forward to increased prosperity from the promotion of banks and railways.[157] Sectional and economic alignments were sometimes broken, of course, for a few white belt parishes were converted to the constitution by its reduction of voting residence to one year,[158] and several black belt parishes, traditionally Democratic, opposed the constitution as the phoenix of the Whig party.[159]

Opposition to slave representation never died out. Vain attempts were made to amend it in the next session of the legislature,[160] and a continuous struggle was waged to mitigate its worst evils.[161] Yet nothing could be done to rid the State of slave representation so long as slavery existed, because slaveholders feared that without it they would be plunged "towards the Vortex of Agrarianism, taxation without representation would at once be reenacted . . . and the French doctrine that 'property is robbery' . . . formally inaugurated in the State House."[162]

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[149] *Picayune*, Oct. 24, 1852. *cf.*, for an illustration of this change, the *True Delta*, Aug. 3, 15, 19, 1852.

[150] *Ibid.*, Oct. 15, Nov. 7, 8, 1852.

[151] See the *Ouachita Register*, *Minden* (Claiborne) *Herald*, *Baton Rouge Advocate*, and (Morehouse) *North Louisianian*, quoted in the *True Delta*, Sept. 10, 1852.

[152] *Harrisonburg* (Catahoula) *Advocate*, quoted in the *True Delta*, *loc. cit.*

[153] *Baton Rouge Comet*, Oct. 29, 1852.

[154] *Baton Rouge Gazette*, Nov. 27, 1852.

[155] *loc. cit.* The vote was 19,383-14,989.

[156] *Concordia Intelligencer*, quoted in the *Delta*, Sept. 1, 1852.

[157] *Crescent*, Nov. 15, Dec. 27, 1852.

[158] *Baton Rouge Comet*, Sept. 8, 1852.

[159] *Crescent*, Dec. 27, 1852. See also the letter of John Slidell, *Louisiana Courier*, Oct. 14, 1852.

[160] *House Journal, 1853*, pp. 64-5; *Documents and Debates*, app., pp. 3-4.

[161] *House Journal, 1854*, pp. 28-9, 34-5; *Picayune*, Mar. 5, 6, 1857.

[162] *Crescent*, Mar. 6, 1857.

GENERAL JAMES WILKINSON—THE LAST PHASE

By THOMAS ROBSON HAY

The ink was scarcely dry on the Treaty of Ghent, which terminated the war of 1812, before the American Congress had set in motion and passed a law reducing the military establishment of the United States.[1] Among the elder officers affected by this act was Major General James Wilkinson. His life had been spent in the military service of his country in positions of honor and responsibility. Though charged with irregular conduct on more than one occasion, he had always been able to withstand the assaults of his accusers and had been acquitted and restored to duty. He had even been promoted to higher rank and on several occasions had been placed in command of field armies, small even for that time, but at least independent, organized forces operating against an active enemy. But now it appeared, he was to be set adrift to get on as best he could. Common decency, whatever one may think of Wilkinson's actions and conduct, suggested that some effort should be made to place him in a position by which he could at least live in some comfort and security in the declining years of his life.

On February 22, 1815, James Monroe, recently acting as Secretary of War, communicated his views to President Madison on the proposed reduction of the army.[2] Monroe and Madison and A. J. Dallas, who was then acting Secretary of War, frequently discussed the subject of the "disbanded officers", especially considering the problem of what to do in General Wilkinson's case. Each of the government officials concerned felt a certain responsibility, if Wilkinson was to be honorably discharged from the army, that he be placed in a dignified and remunerative position in the Federal service. The first thought was that he be given charge of "the naval office in New York City . . . as a comfortable retreat," which also was a position in which "no money was handled." It soon developed, however, that Wilkinson either would not or could not "go into the New York custom house." Madison

[1] *Annals of Congress*, 13th Congress, 3rd Session, p. 1178.
[2] Monroe to Madison, Feb. 22, 1815, Monroe *Papers*, Library of Congress.

came to think "General Wilkinson's case distressing . . . (and asked) if he would superintend Indian affairs." He wrote Monroe, asking "Have you been able to find any provision for General Wilkinson?"[3]

Wilkinson, on his part, in no uncertain terms, stated his views on the action of the administration in approving his discharge from the army. He was intemperate in his criticism and skeptical of the sincerity of Madison's and Monroe's talk of finding suitable employment for him. Wilkinson's remarks caused Madison to write: "I am willing to do the best we can for Wilkinson, and hope he will not frustrate our dispositions, by insinuation or threats which must be defied. Whether he would suit at what you hint, I am at some loss to say. The provision . . . will be but temporary and every year added to his age, may increase the difficulty of making desirable provision for him."[4] A few days later Madison suggested that "Wilkinson may be appointed" one of the commissioners to run the boundary line provided for by the Treaty of Ghent. This idea seems to have been promptly discarded as Madison wrote Dallas suggesting Wilkinson as Superintendent of Indian Affairs or alternately as a Commissioner to treat with the Indians.[5]

The offer as Indian Commissioner was made, but promptly rejected in such an angry and decisive manner that Dallas wrote Madison: "General Wilkinson . . . has broken through all decorum; and indulges the most malignant rage, in every conversation. He will leave Washington next week for active mischief elsewhere. His vehicle is the (Philadelphia) Aurora. . . ." Dallas added: "I wish you could provide for him abroad . . ." and suggested Bordeaux. It seemed a clever move to get Wilkinson out of the country, but still subject to official control. Nothing came of the idea.[6]

On May 29th Dallas suggested to Madison that Wilkinson be appointed to serve with Governor Worthington of Ohio and John Graham "as the pacific negotiators" to treat with the Indians.

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[3]Dallas to Madison, March 13, 1815, quoted in G. M. Dallas, *Life of A. J. Dallas*, p. 136; Monroe to Dallas, March 13, 1815, *Ibid.*, p. 136; Dallas to Monroe, March 13, 1815, Monroe *Papers;* Madison to Monroe, April 10, 1815. *Ibid.;* Madison to Monroe, April 18, 1815, *Ibid.*

[4]Madison to Monroe, May 2, 1815, *Ibid.*

[5]Madison to Monroe, May 10, 1815, *Ibid.;* Madison to Dallas, May 24, 1815, Dallas, *op. cit.*, p. 427.

[6]Dallas to Monroe, May 28, 1815, Monroe *Papers.*

Madison approved the suggestion and the proffer was made, but promptly declined. General W. H. Harrison was finally appointed in Wilkinson's stead.[7]

Though the case seemed hopeless, so far as satisfying Wilkinson's desires was concerned, Dallas, Madison and Monroe continued to give his case thought and consideration. The original proposal for the post as Naval Officer was again taken up, Wilkinson's case being bracketed, this time, with those of Generals T. H. Cushing and John P. Boyd, both old friends and army associates. In August Dallas wrote Madison that "The cases of General Wilkinson, General Cushing, and General Boyd are urged on me." He asked for authority "to create vacancies in the Collectorships at New York, New London, Newport, etc." Madison thought "The cases of the three generals . . . embarrassing. . . . After the language with which General Wilkinson met the offer to treat with the Indians it ought to be well ascertained before another be made that the motives to it will not be misinterpreted." In the end, Cushing was appointed Collector at New London and Boyd was made the Naval Officer at Boston, but apparently Dallas ascertained that Wilkinson would not consider the proposed appointment at New York and consequently made no tender.[8]

Thus seem to have terminated the efforts of the administration to place General Wilkinson in an acceptable position in the public service. He had gone first to Baltimore and in the late summer he settled in Philadelphia to write his *Memoirs*. The attitude of many of his friends, at this time, is evidenced by a letter written him by one of the officers to be retained in the reduced army, who, as a young man, had served under him in the Indian campaigns in Ohio. Captain William Wilson wrote from Baltimore, August 9, 1815: "After you took leave of us I went to the door and looked after you. I was much affected. I never was so affected in your happier days. I thought I saw a man departing possessed of a noble heart and fine feelings that had done a great deal of service for his country. A man that had reared up a great many young men and had taught them how to fight their country's battles. I say my heart filled when I saw that man departing

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[7]Dallas to Madison, June 1, 1815; Dallas, *op. cit.*, p. 432; Madison to Dallas, May 29, 1815, *Ibid.*, p. 431; when Wilkinson declined, Madison, on June 9, 1815, appointed W. H. Harrison, who accepted, *cf.* Madison to Monroe, June 14, 1815, Monroe *Papers;* D. B. Goebel, *William Henry Harrison: A Political Biography*, p. 209; Governor William Clark, Ninian Edwards and August Chouteau were appointed Commissioners to treat with the Mississippi Indians, *cf. National Intelligencer*, May 23, 1815.

[8]Dallas, *op. cit.*, p. 436; Madison acknowledging Dallas's letters of July 29 and 31, August 1, 3, and 6, 1815, in Madison to Dallas, August 10, 1815, Dallas, *op. cit.*, p. 440.

that had done so much for his country and now in the decline of life cast off as it were to make room for those that were hardly born when you began your military career—ungrateful country! Yesterday Colo. Goodwin from Virginia, a Member of Congress, called at my house. I asked him what they intended to do for General Wilkinson. He said something good . . . he said he was very anxious to see you. I was (glad?) to hear him say you had a great many friends rising up in your favor that had been before against you—they think you cruelly treated. . . ."[9]

As soon as it was known to what extent the army was to be reduced, the officers affected organized themselves into country-wide "Associations of Disbanded Officers." These officers felt the administration inconsiderate, to say the least, in its proposal to dismiss them summarily without pension, pay compensation or other assistance to readjust themselves as best they could. Wilkinson was active in this movement which found expression in numerous public protests. Country-wide committees of correspondence were set up, Wilkinson being the New Orleans correspondent, though he did not at once go there. This was not necessary as he could "correspond" on the subject from Baltimore or Philadelphia as well as from New Orleans. Baltimore and Philadelphia anti-administration papers were always open to him.[10]

When General Wilkinson returned to Washington after the conclusion of his court martial in Utica, New York, he remained under technical arrest. On April 18, 1815, President Madison approved the findings of the court acquitting him of the charges brought against him by the Secretary of War, John Armstrong. While awaiting the outcome of the efforts of the administration to find some acceptable position for him in the public service, the General was joined by his wife and her sister. They had spent the time since coming north with him in the summer of 1813, visiting with his friends in Baltimore and with his brother's family in Calvert County, Maryland.[11]

As his military service was now over and he was once more in civil life, for the first time in nearly twenty-five years, Wilkin-

[9]William Wilson, Baltimore, to James Wilkinson, Baltimore, August 9, 1815, Library of Congress.

[10]*The* (Philadelphia) *Aurora*, April 8 and 17, May 12 and 25, June 16, 21 and 24, July 3, 8, 10 and 13, 1815; *Niles Register*, July 1, 1815, 8: 307.

[11]While in Washington Wilkinson had a certificate of land ownership of his wife's sister, Josephine, notarized and recorded. The land adjoined that of Mrs. Wilkinson in the Feliciana District of Plaquemines Parish, La., and had been surveyed at the direction of Mrs. Wilkinson's father, Carlos Trudeau, then Spanish Surveyor General of the Province of Louisiana, *cf. A. D. S.*, Massachusetts Historical Society, dated May 2, 1815. The paper was notarized by Moses Young, an old friend of Wilkinson, who was soon to go to Madrid as United States Minister to Spain.

son applied to the legislature of Maryland for the "commutation money" or a life pension, as provided for by an act of the legislature. With the active aid of his many friends and relatives in and out of the legislature, a resolution was passed at the December, 1815, session which awarded him "during life . . . half pay of a Colonel of dragoons, as remuneration for services rendered his country in the revolutionary struggle for liberty. . . ." The pension was to be paid by "the treasurer of the Western Shore". Hezekiah Niles remarked: "This is said to be as high a pension as was ever granted by the legislature." Wilkinson's friend, William Duane, Editor of *The Aurora,* noticed the award with the remark that such recognition was due "to merits of a *gentleman* and a *soldier,* who has merited more, and reaped less, of the rights appertaining to his exertions in the service of this country, than any other of the band of heroes of '76 now living. . . ." A subsequent item seems to indicate that General Wilkinson elected the alternative to a life pension and received "five years full pay of a lieutenant colonel," about $3500.00.[12] Previous to receiving this "commutation money," Wilkinson had decided to remain in Philadelphia to write his *Memoirs* before going to New Orleans where he proposed to settle. In order to live comfortably and at the same time economically and to avoid distraction and so that his wife's expected child might be born in the country in which the General expected to pass the remainder of his life, in the summer of 1815, Mrs. Wilkinson and her sister took ship from Baltimore to New Orleans where they arrived safely in August. On the 23rd of the following January, Mrs. Wilkinson presented her husband, *in absentia,* with girl twins.[13]

In the fall of 1815, Wilkinson was settled in Philadelphia "at the 3 mile Stone near the Red Hart on the Road to the City." Here he began the composition of his *Memoirs* that are the despair of the historian and the reader both because of their illogical arrangement and the verbosity of their contents. He wrote his friend and sponsor, Solomon Van Rensselaer: ". . . I have no secrets at present; as I care for nought under Heaven but truth, virtue, Honor and my Friends, and therefore it is merely to conceal from my Enemies, that they may not profit by a knowledge of my opinions and designs, which induce me to caution you to reserve. . . ." He carried on an extensive correspondence with his friends through-

[12]G. M. Brumbaugh, *Maryland Records,* 2:408; *Niles Register,* Feb. 17, 1816, 9:436; *The Aurora,* Feb. 13 and 22, 1816.
[13]Wilkinson to Van Rensselaer, Feb. 25, 1816, Darlington *Papers.*

out the country seeking data on controversial points, verification and approval of his statements and conclusions, financial aid in publishing his work, and assistance in distributing it. One visitor, who called on him in connection with deeds to property formerly owned in Frankfort, Kentucky, described Wilkinson at this time, as "a short (stout) man, round faced, remarkably active, (who) put his hand on his horse's saddle and sprang into it. . . . I went to the house near Philadelphia (where he lived). He was in the midst of his papers, knee deep, all around him on the floor. He was preparing his Memoirs in vindication of himself. He kept copies of all the letters he ever wrote. . . ."[14]

As a diversion and a change, Wilkinson corresponded frequently on national and state politics. He favored De Witt Clinton for the presidency and wrote Solomon Van Rensselaer many letters in praise of him, urging that Van Rensselaer do what he could to gather support and votes. He thought Clinton might be made Governor of New York, "having an understanding with Pennsylvania (and other Eastern States) that he will be offered for the Chief Magistrate. . . ." As an aid to Clinton's candidacy, Wilkinson sent "a memoranda written as a specimen of my stile and independence," which Van Rensselaer was to place in various newspapers. Wilkinson wrote: "You perceive I am still a temporizing office hunter." At this time, he was particularly bitter against James Monroe whom he characterized as a "poor devil" and "a big liar." Except for his "Education, Habits and Manners (which) unfit him for the Office" of President, Wilkinson thought Andrew Jackson "the only man . . . who possesses a Spark of Honor Independence and disinterested Patriotism. . . ." The former Secretary of War, John Armstrong, the Commander-in-Chief of the Army, Jacob Brown, "that dirty dog Brown," Winfield Scott and others with whom he had come into collision in times past were pet aversions and the subjects of frequent caustic comment.[15]

Sponsored by his friend Wililam Duane, Wilkinson entered into the social and political life of Philadelphia. The last day of January, 1816, he was a prominent guest at a dinner given "by members of the Old Nob, in Market Street." He was toasted as

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[14]Wilkinson, Philadelphia, to Van Rensselaer, Albany, Dec. 29, 1815, *A. L. S.*, New York State Library; D. C. Humphrey as told to L. C. Draper in 1816, Draper *MS.*, 16CC292-96; During this period Wilkinson wrote that he had "been living most agreeably and independently at $5. a week," Wilkinson to Dearborn, March 17, 1817, Library of Congress.

[15]Wilkinson to Van Rensselaer, June 30, 1816, *A. L. S.*, New York State Library; same to same, Dec. 29, 1815, June 30 and Sept. 24, 1816; *Ibid.*; same to same, Feb. 25, 1816, Darlington *Papers*; same to same, March 25, 1816, *A. L. S.*, New York State Library.

"The meritorious and persecuted veteran." A few weeks later, on St. Patrick's Day, he was an honored guest at a dinner given by St. Patrick's Benevolent Society and Erin Benevolent Society. He was the subject of a toast: "General Wilkinson—Though deranged he is not forgotten by all true Americans." On May 13th, at a dinner of the Tammany Society held at "their great wigwam" in Philadelphia, Wilkinson gave a toast: "Avarice and ambition, the fruitful source of corruption, the havoc of republic." In turn, after he "had retired," Wilkinson was toasted as "The Hero of '76, who sustains the principles of '76, and who detected and exposed treason in its infancy." Again in the following July, he was an honored guest at a dinner given "to the Independent Artillerists" of Philadelphia. At this gathering a toast from a friend in Trenton was read. It was addressed to "General Wilkinson—a life spent in the services of his country, (who) deserves a better reward than the persecution of his government and the frowns of poverty." At a dinner of St. Patrick's Society held March 17, 1817, Wilkinson was toasted as "The persecuted and gallant General Wilkinson—A soldier, who's well earned laurels decorate another's brow." Several days later, Wilkinson was characterized as "the experienced and accomplished soldier, who formed the Convention which Burgoyned a British and Hessian army—The sons of Hibernia denounced with him and with him excluded from the late army (at the end of the War of 1812) should be consoled by the association in proscription." And so it went during the period of his stay in Philadelphia.[16]

The composition of the *Memoirs*, with occasional interruptions, went on apace. As early as September 28, 1815, Abraham Small, the publisher, announced that they were "In the Press and will be speedily published." A proposed table of contents was included in the printed announcement which occupied three-fourths of a column in *The Aurora*. This notice was premature, as it was to be more than a year before the publisher could announce that the *Memoirs* would be "ready for delivery to subscribers about December 2d." The announcements were conflicting. In April, 1816, Wilkinson wrote that his *Memoirs* "will be out in August positively," but in July, another printed announcement stated that the *Memoirs* were "passing rapidly through the press and will appear in three volumes in September." At this time "It was reported as mere hearsay that General Wilkinson had given up pub-

[16] *The Aurora*, Feb. 2, March 20, 21, 22, May 18, July 9, 1817.

lication of his *Memoirs*. We leave it to the admirers of the fine arts to divine the motive of such a report (as) lately exhibited in New York and other places." On March 17, 1817, another advertisement announced that the *Memoirs* would be "ready for delivery . . . on the 10th inst. . . . subscriptions (were) more numerous than the books printed." Several weeks later *The Aurora* commented editorially: "Many who wished General Wilkinson's work suppressed three months ago begin to *find* fault with their publication now; they *unmask imposture* in a spirit worthy of Sallust and with an energy worthy of Tacitus."[17]

At the time of their publication, the *Memoirs* aroused considerable comment, both favorable and adverse. *Niles Register*, of April 8, 1817, announced the publication, with the remark that "This puts to rest a very silly story about their being suppressed by an officer of the government. We have not yet seen a copy of the work, which doubtless is very interesting." There were a number of individuals who would have preferred the suppression of Wilkinson's story, notably General John Armstrong, Jr., until recently Secretary of War. In the third volume, devoted to Wilkinson's part in the Canadian campaign of 1813, Armstrong is the villain of the narrative, which though one-sided contained too much of the truth to make matters particularly comfortable for Armstrong. Nearly five years were needed for Armstrong to get around to writing his defense against Wilkinson's accusations. In the form of a review, it was more verbose than Wilkinson's defense, if such a thing be possible. Another widely circulated review, which was not altogether unfavorable, appeared, unsigned, in the *North American Review* in 1818. Duane, on his part, saw fit to suppress at least one anonymous review signed "Conon." Over twenty years later Armstrong returned to the attack. His rebuttal didn't reply, but only stirred up controversy with Wilkinson's partisans.[18]

General Wilkinson's *Memoirs* are bulky and poorly organized. They are without continuity of narrative and content, but, on the other hand, they contain a great deal of important and relevant information. The first half of volume one covers Wilkinson's

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[17]Wilkinson to Van Rensselaer, April 29, 1816, *A. L. S.*, New York State Library; Advertisement in *The Aurora*, Nov. 1, 1816; *The Aurora*, July 28 and Sept. 19, 1816, March 17 and April 3, 1817.

[18]*Niles Register*, April 5, 1817, 12:96; Armstrong's review of Wilkinson's *Memoirs* was published in *The Literary & Scientific Repository*, June, 1820, No. 1, pp. 1-24; Oct., 1820, v. 1, no. 2, pp. 441-471; Jan., 1821, v. 2, no. 3, p. 86; and July, 1821, v. 3, no. 5, pp. 106-137; *North American Review*, 6:78-109; *The Aurora*, March 27 and April 4, 1817; John Armstrong, *Notices of the War of 1812*, 2 volumes.

career through the Revolution, when there is a gap and the narrative takes up the period just before the War of 1812. The last half of the first volume skips about from one event to another without reference to chronology, with no continuity, and is arranged in such a way as both to bewilder and exasperate the reader. The second volume is made up largely of material used by Wilkinson in his defense at his first court martial in 1811, which had to do primarily with his alleged connection with the Burr Conspiracy and his dealings with the Spaniards. The material in this second volume in somewhat altered form had previously been published under the title, "Burr's Conspiracy Exposed and General Wilkinson Vindicated." This publication had been offered in refutation of remarks contained in Daniel Clark's *Proofs of the Corruption of General James Wilkinson.* The third volume is given up entirely to the proceedings and testimony offered at Wilkinson's second court martial held at Utica and Troy, New York, to answer charges brought by General Armstrong.

Solomon Van Rensselaer and other friends had done their work of obtaining subscriptions so well that Wilkinson was able to write that the sale of the *Memoirs* "very far exceded the impression struck of 1500" and that "they were sought after with great avidity." Wilkinson says he wrote "with perfect freedom regardful only of truth. All I ask is that (they) may be carefully and impartially read . . . here (in Philadelphia) it is approved by all parties and persons except official sycophants. . . ." Some readers "insist that I must go on and tell (the) truth to our country of which they have been kept in the dark. . . ." Wilkinson sent his friend, General Henry Dearborn, a copy of his *Memoirs* "for which you are better able to spare me $10. than I am able to give you the book. You see I am becoming economical, because necessary, but shall never be mean." Dearborn not only accepted and paid for the books, but sent Wilkinson a flattering testimonial letter regarding them. Wilkinson also sent Van Rensselaer "300 or 400 copies . . . and I must conjure you to raise the money at any reasonable sacrifice, not to exceed 10 (%) profit. . . ." He reported that the work was "greedily sought for (in Philadelphia) at $10.50 with atlas to subscribers and $12. to non-subscribers or delinquents." Evidently, in spite of the early advance sale of the *Memoirs* by subscription and by consignment to various voluntary distributors, there were difficulties. The actual money receipts left much to be desired; some of the consigned lots seem to have

been returned, unsold. Wilkinson made frequent requests to his various correspondents to help him dispose of remainders at the best price obtainable.[19]

Though "all impatience to be gone to my wife and children, twins, now more than a year old, but unknown and unseen," Wilkinson was delayed from week to week pending issuance of his *Memoirs*. His constant need for cash made him "impatient to collect the proceeds of the Book," which had been sold in one way or another. He wrote: "circumstances imperatively demand my presence with my family on the Mississippi." He wanted ". . . Cash as it is important to me to purchase slaves to carry with me. . . ." In the early part of 1816 Wilkinson wrote: "I shall leave this in August." About the same time he also wrote his friend, Thomas Aspinwall, then United States Consul at London: "After July (1816) address me at New Orleans." But it was over a year before he finally set sail for New Orleans and "My dear Celestine." On April 15, 1817, Wilkinson wrote: "I shall embark for New Orleans from Baltimore about the 15th proximo." He proposed "to become a planter of sugar and cotton on the Mississippi where if my health is preserved I shall make $12,000. next year." He expected "to settle on the Bay of St. Louis near the Wolf River, where I shall cultivate cotton and breathe pure air." Wilkinson was "determined with the will of God to make a fortune in five years." He urged his friend Van Rensselaer to move to the Mississippi with him, writing, "Suppose I get you a plantation adjoining me on the Mississippi on a spot as healthy as Albany, where you may so invest a Capital of $30,000. as to yield you $5,000. the first year and $10,000. the Third. Will you sell, pack up and embark and land at New Orleans where I will meet you and carry you home in a Steam Boat."[20]

Finally, early in June, 1817, General Wilkinson set sail in the Packet Ship *Orleans*. Originally scheduled to depart on May 31st, the ship was delayed until June 7th on account of storms and unfavorable weather. Once at sea, the distinguished passenger

[19]Wilkinson to Van Rensselaer, April 15, 1817, *A. L. S.*, New York State Library; Wilkinson to Dearborn, March 17, 1817, *A. L. S.*, Library of Congress; Wilkinson to Van Rensselaer, March 1 and 10, 1817, *A. L. S.*, New York State Library; Wilkinson, Magnolia Grove, to Henry Thompson, Baltimore, June 17, 1820, *A. L. S.*, Chamberlain *Papers*, A, 8.23, Boston Public Library.

[20]Wilkinson, from New York, to Van Rensselaer, Albany, Feb. 16, 1817, *A. L. S.*, New York Historical Society; Wilkinson, Philadelphia, to Van Rensselaer, Feb. 14, 1817, *A. L. S.*, New York Public Library; Wilkinson to Van Rensselaer, Feb. 25, 1816, Darlington *Papers*; Wilkinsn to Van Rensselaer, April 15, 1817, *A. L. S.*, New York Public Library; Wilkinson to Thomas Aspinwall, May 28, 1816, *A. L. S.*, New York Historical Society; Wilkinson to Van Rensselaer, Nov. 7, 1816, *A. L. S.*, quoted in Henkel's Catalogue No. 965, June 7-8, 1907; Wilkinson to Van Rensselaer, May 29, 1816, *A. L. S.*, New York Historical Society.

settled down to a voyage of four weeks or more, perhaps contemplating, in retrospect, his situation on those previous voyages he had made between North Atlantic ports and New Orleans. Part of the time, at least, he was occupied in writing letters to friends on past events, current politics, and future prospects. He arrived in New Orleans early in July, 1817, where, "blessed by my Celestine and two beloved little daughters, as good and beautiful as angels, with a bare subsistence which I am endeavoring to improve by my labours, I hold myself above the attractions of the world, envy no man's condition (and) enjoy tranquility and happiness without alloy." Wilkinson found his ". . . Sister Josephine (Trudeau) is married to a Creole of 3 or 400,000$ fortune (but) the same lively Dame . . ." as ever. Because of the death of his father-in-law, Sr. Carlos Trudeau, several months before his arrival, the General, for a time, was engaged in assisting in the settlement of his estate.[21]

General Wilkinson at once took up the completion of his *Memoirs* which he planned "to send out (and) . . . which will comprize revolutionary incidents." He expected "to send (them) forth revised and in a new shape with three additional volumes." In the "three huge volumes" already printed, Wilkinson thought he had only been able "to glance at" one fifth "of my public life." He considered this literary work "as a recreation in my hours of relaxation from necessary labours, to provide for my wife and children and old age." Wilkinson wrote here and there for data and other needed information to aid him in his composition. In the meantime, "adhering to my determination to make myself independent by exertion and industry, before I again go into the world, I decline all company, refuse all public appointments, and in my Books, my Pen, my divine little Creole and our charming little girls, I enjoy more tranquility and happiness, than I have experienced in my variegated life." He had been ill, "confined to my Bed twenty two Days," and though very sick, he recovered to resume his "seat a mere skeleton." Before long, however, he was "new flushed (and) as elastic as (a) Billiard Ball and with the grace of Heaven, will not have another Malady of any kind, for

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[21] *The Aurora*, June 9, 1817; Wilkinson, "Off Cape Henry," to C. A. Rodney, June, 1817, *A. L. S.*, Library of Congress; Wilkinson to Aspinwall, Sept. 26, 1817, *A. L. S.*, New York Historical Society; *The Aurora*, Nov. 13, 1816.

ten or fifteen years to come." During this period, on November 19, 1817, a son was born. His domestic responsibilities were increasing.[22]

But, by now, his plantation was yielding a better living. The General had re-established personal and business relations with old friends living in New Orleans and had selected Morgan, Dorsey & Co. as his bankers. He wrote: "The Cotton Crop is great and the Sugar equal to any former season—the latter at 9 cts the former has been at 35, and is down I understand to 31—and mark me, will fall if the great quantity of shipping should not compel the purchase—the measure in Britain of importing Cotton from the East Indies may I think reduce the next crop to 12 or 15 cents." A traveler who visited Wilkinson at this time recorded: "Cotton does not flourish so low down (the River) as General Wilkinson's plantation; but sugar cane is here remarkably productive."[23]

During this period on the Mississippi as a planter, General Wilkinson was a keen observer of events throughout the country. He continued his interest in national politics and, especially, in the political situation and personalities in New York State. He wrote frequently on the subject, commenting particularly on Monroe and the conduct of his administration. Though "secluded from the World, sunk in obscurity and labouring for Bread, (his) feelings (were) as much as ever alive to the great interests of our Country, however illy, its empty venal fastidious Chief (James Monroe?) and his Hypocritical predecessor (Madison?) may have requited a Life (Wilkinson's?) of active zealous services; nor can I repress the ardent devotion which I have ever paid to the immutable principles of Justice, or restrain the disgust & indignation which I feel, when I behold the Rule of Tyrants & the sway of impious men; for whatever may be the opinions of my misguided contemporaries, I have from my earliest perceptions of Vice and Virtue 'loved righteousness & hated Iniquity'." He was amused and complimented that "after four years meditation, the attention of a friend", John Armstrong, the former Secretary of War, should have criticised his *Memoirs*. Armstrong wrote "with such acrimony and virulence as to defeat his object." Wilkinson thought to make suitable reply, but we have found no record that he did so. He watched the activities "of those fine *loyal* Burrites" and specu-

[22]Wilkinson to Aspinwall, Sept. 25, 1817, *A. L. S.*, New York Historical Society; Wilkinson to Dearborn, March 17, 1817, *A. L. S.*, Library of Congress; Wilkinson to Henry Thompson, Jan. 14, 1818, *A. L. S.*, Darlington *Papers*.

[23]Wilkinson to Thompson, Jan. 14, 1818, *A. L. S.*, Darlington *Papers;* Evans, in *Early Western Travels*, edited by R. G. Thwaites, 8:349.

lated on their intentions. As he had opposed the promiscuous, uncontrolled sale of liquor to the Indians, during his days of command in the western country, so he was concerned with the "strange compound of inconsistencies" exhibited throughout the South toward the negro and slavery. He wrote: "You can not find any one of virtue & Intelligence, who viewing negro slavery in the abstract, & to probable results, will not condemn it as a curse, yet yielding to Habit, indolence and ease we approve the curse—The Missourians will discover too late that the opponents to the introduction of Slavery among them were their best friends." He urged that the country hold fast to the Union, "for it is the Rock of our political Salvation . . . be (not) unmoored for . . . it is better 'we should submit to the Ills of which we know, than fly to those of which we know not.' The Southerns & Westerns have most to dread from the Catastrophe, yet they are accelerating it by their insatiate desire for limitless domain."[24]

In the midst of these speculations, an old chicken came home to roost. The suit instituted years before by General John Adair for damages because of his arrest in New Orleans in 1807 as an alleged accomplice of Burr had been decided in a Natchez, Mississippi, court in Adair's favor and an award of damages to the extent of $2500 made. Immediately General Wilkinson set in motion plans to secure payment of the assessment by the government itself. His friends, on February 14, 1820, introduced into the House of Representatives and into the Senate "an act for the relief of General Wilkinson." In the course of the debate on the bill it was developed that General Wilkinson had no ready funds with which to pay the judgment. Rather than allow him to go to debtor's prison in accordance with prevailing laws, it was voted, April 14, 1820, to appropriate $3,000, rather than $2,500, the amount of the judgment. Thus was this old soldier over another obstacle with more cash in hand than was required to satisfy the obligation.[25]

The death of his old friend and former comrade and commander, General Arthur St. Clair, in the fall of 1818, prompted him to write the ever-faithful Van Rensselaer to ask if it would "be possible to fulfill (St. Clair's) disposition, and procure a

[24] Wilkinson to Van Rensselaer, Jan. 16, 1821, *A. L. S.*, New York State Library.

[25] *Annals of Congress*, 16th Congress, 1st Session, pp. 613, 619, 675, 678, 1289, 1617, 1634-37; notice of award to John Adair, *Niles Register*, Jan. 23, 1819, 15:416; W. F. McCaleb, *The Aaron Burr Conspiracy*, p. 300.

transfer of (his pension) to me from the Government." Nothing came of the suggestion, as such a transfer would have required an act of Congress. The suggestion, however, is both naive and revealing. In this same letter Wilkinson wrote: "My history is before the World, and after repeated severe scrutinies which I have passed, without stain or blot being attached to my character, I trust no exception can be taken to any transaction of my Life. The good which I have done applies to my Country, the harm to myself. . . . The calamities of the times have blasted my hopes. I labour for my bread with all the content that belongs to a frail man, but find it an up-hill business. . . . Yet I thank God my spirits are unbroken, and my health better than I could have expected at sixty-three. . . . I have not abandoned the idea of continuing my Memoirs. . . ."[28]

The "up-hill business" of being a planter, the continuance of his *Memoirs*, and the role of *pater-familias*, each and all of them, were too prosaic for one whose life had been one of continued action and movement. Wilkinson longed again to be in the spotlight, to be doing things and going places. In the summer of 1819, such an opportunity seemed to have arrived.

For several years there had been considerable activity in business and political circles in New Orleans concerning the financing of revolutionary attempts to overthrow Spanish rule in Mexico. Likewise, many filibustering expeditions against Texas had their origins in New Orleans. One of these expeditions was organized and led by General Xavier Mina, a Spanish soldier who had served with distinction against Napoleon. After the Spanish restoration he went to France and then to London, the gathering place for liberals, revolutionists and others out of step or out of sympathy with the ruling government. Like Miranda before him, Mina had become imbued with the idea of freeing Mexico from Spanish rule. In London, he secured the patronage of Lord Holland and of prominent Americans resident there. He sailed to Baltimore and after a short stay in the East he went to Galveston where he established his headquarters in the fall of 1816. In the following spring, after being outfitted largely by means of funds secured in New Orleans, Mina set out for Mexico and was for a time successful. After sev-

[28]Abstract, *A. L. S.*, Wilkinson to Van Rensselaer, Dec. 14, 1819, quoted in Henkel's Catalogue No. 842 (1900), p. 76.

eral months of irregular warfare, he was taken prisoner and shot and his forces dispersed.[27]

Another attempt against Spanish rule in Texas and Mexico, before the successful revolution in 1821, was a filibustering expedition led by James Long. He had served with Jackson at New Orleans and afterwards had settled at Natchez and married a distant relative of General Wilkinson. The expedition was the result of a public meeting held in Natchez early in 1819, at which an organization was formed for the purpose of invading Texas and setting up a republic. The command is reported to have been tendered to General John Adair of Kentucky but was declined. It was later accepted by Long, who immediately assumed the title and authority of "General." He marched his force to Nacogdoches, in eastern Texas, where he organized a provisional government styled the "Republic of Texas." At the same time he endeavored to secure the active co-operation and assistance of Lafitte, the pirate chief at Galveston. The "Republic" had been in existence less than four months when a Spanish force attacked and dispersed Long's army, Long himself escaping by way of Galveston to New Orleans only to unite his dispersed force at Fort Bolivar.[28]

When Long's expedition was organized, both General Wilkinson and Adair were in Natchez attending the hearing of Adair's suit against Wilkinson for false arrest at New Orleans at the time of the Burr Conspiracy. Whether the command of the expedition

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[27]For references to Mina and his expedition, *cf.* John Quincy Adams, *Memoirs*, April 23 and August 30, 1816, 3:340, 439; Winfield Scott, *Autobiography*, 1:169; Winfield Scott, Philadelphia, to James Madison, Washington, April 12, 1822, Gratz *Papers*, Pennsylvania Historical Society; Winfield Scott to William Thornton, Jan., 1817, quoted in A. C. Clark, "Dr. William Thornton", *Records*, Columbia Historical Society Collections, 18:192; G. L. Rives, *The United States and Mexico*, 1:125; W. D. Robinson, *Memoirs of the Mexican Revolution, Including A Narrative of the Expedition of General Xavier Mina, passim.* Mina was born, December, 1789, shot, November 11, 1817, pp. 57-58. Mina was honored as "one of the heroes of the Mexican Pantheon." It was the funds raised in New Orleans for Mina that Wilkinson hoped to collect from the revolutionary Mexican government. *Cf.* also Emperor Augus Gurznan, *Mina El Mozo—Heroe de Navarre*, pp. 256-287.

[28]*Papers of Mirabeau B. Lamar*, 2: 51-53; sketch of Long in *Dictionary of American Biography*, 11: 376-77; H. S. Foote, *Texas*, pp. 201-203; Lafitte not only refused to have anything to do with Long and his "Republic", but kept the Spanish authorities advised of Long's movements. In the spring of 1822, on hearing of the overthrow of the Spanish government by the revolutionary force under Iturbide, Long went to the City of Mexico in an effort to secure recognition of his right to share in the benefits of the revolutionists' success. As he attempted to enter the Hall of Congress, in the City of Mexico, he became involved in an altercation with the sentinel who refused him entrance. In the quarrel that followed, Long was shot dead. His filibustering efforts had been none too successful, though they were the forerunner of other similar efforts that in the end brought about Texan independence. One writer recorded, at the time of the dispersal of Long's forces in the fall of 1819 that ". . . the expedition has passed its Zenith and many of the officers Deserting the cause which I believe was at Best a Bad one and conducted by Bad men. Reports say some things of the officers at the Head of affairs that is not prudent to put on paper . . ." (J. H. Bell, Natchitoches, to Stephen F. Austin, Sept. 21, 1819, "The Austin Papers," in *Report* American Historical Association, 1919, 2:348; for Long, *cf.* Rives, *op. cit.*, 1:125-127; Cardinal Goodwin, *The Trans-Mississippi West*, pp. 157-159; *National Intelligencer*, March 2, Sept. 9, Oct. 11, Nov. 1, and Dec. 2, 1820; account of Long's death, *Ibid.*, June 10, 1822; Lyle Saxon, *Lafitte, The Pirate*, quoting correspondence between Long and Lafitte of June 24, July 7 and Sept. 30, 1819, pp. 227-232; L. E. Fisher, "American Influence Upon the Movement for Texan Independence," in *Mississippi Valley Historical Review*, 18:474-77.

was offered to General Wilkinson is not known, but it is at least reasonable to suppose that it was. He was well known and was related to many of the influential families in the section, including Long himself. He no doubt gave Long the benefit of advice and counsel and himself remained in the vicinity so that if the outcome of the expedition should be favorable, he would be in a position to profit by the result. If Long was defeated, he would have gained nothing, neither had he risked anything. The practice of a lifetime would not be changed at such a late stage in life. Long's forces assembled at Nacogdoches. Wilkinson waited at Natchitoches, Louisiana, about seventy-five miles to the eastward. After Long's defeat in October, 1819, Wilkinson recognized the futility of such an effort and returned to his plantation to await a more encouraging opportunity.[29]

The old soldier, who craved action and excitement, did not have to remain long on the Mississippi "sunk in obscurity and labouring for Bread." Augustin de Iturbide, formerly serving under the Spanish standard, had come to be regarded as the leader around whom the Mexican insurrectionists could rally to achieve the pacification of the country and independence of the Spanish Crown. On February 24, 1821, the negotiation of the Plan of Iguala gave unity to the organization and leadership of the revolutionists. In September, the royalist soldiers evacuated the capital City of Mexico. On September 28, 1821, the revolutionary junta met in a hall of the former vice-regal palace and later elected Iturbide as president. On February 24, 1822, the Congress which had been convoked in accordance with the treaty of Cordoba of August 21, 1823, assembled in the City of Mexico to certify the acts of the revolutionary junta. On May 18, 1822, Iturbide was proclaimed Augustin I, Emperor of Mexico.[30]

The triumph of the Mexican revolutionists seemed to offer to Wilkinson both an opportunity to regain his health and to recoup his declining fortune. His five years on the Mississippi as a planter had not brough the anticipated fortune. The rigors of outdoor life as a farmer and planter carried on under the beating sun through clear weather and bad, had sapped his vitality and contributed to the weakening of a constitution that, for nearly fifty years, had been subjected to many unusual demands. A growing family imposed a further demand on him for a restoration of health and an increase in income.

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[29] *National Intelligencer*, quoting a dispatch from Alexandria, La., of July 3, 1819.
[30] W. S. Robertson, *Rise of the Spanish-American Republics*, pp. 112, 115, 118, 124, 128-129.

Urged by these twin necessities for health and fortune, General Wilkinson took passage from New Orleans in a ship sailing for Vera Cruz, Mexico. Here he arrived early in April, 1822, but the authorities, fearing a sinister purpose in his visit, refused to permit him to land. As usual, wherever he went something happened; but, as usual, the General found a means of circumventing what to many others would have been insurmountable obstacles. In this case, he adopted the simple expedient of landing at another port, where he was admitted without question and from which he proceeded first to Puebla and then to the City of Mexico.[31]

By the last week in April General Wilkinson was ". . . at the fountain head of the new born nation . . ." where he established himself as a person of importance and where he received "the most distinguished attention." Having previously "passed (the Emperor-to-be Iturbide) a note of Ceremony, which (was) answered with a Charming billet doux", Wilkinson "was received with great courtesy . . . (and) prattled to the Emperor and his wife for more than half an hour during which (the Emperor) did not utter a sentiment . . ." worth recording.[32]

The General took temporary quarters "at the house of the Captain General, where he was waited on shortly after his arrival by General Iturbide and the members of the Regency. . . ." Though "his business (was) private and nothing to do with Government of the United States" his practiced eye at once perceived the chaos, political and social, into which the country had been plunged by the success of the revolutionists. In spite of its display of confidence and braggadocio, it was evident that ". . . The tenure of the new Government (was) exceedingly precarious; money very scarce; trade stagnant; (and) the people ignorant and prejudiced. . . ." Though "entirely silent on politics" because of "having business which require(d) abstraction wholly from such affairs . . . ," Wilkinson, nevertheless, kept a close contact with political and military events and was soon known as the "comrade" of Iturbide. In this capacity one of his first acts was to furnish Stephen F.

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[31] *National Intelligencer*, May 14, 1822; J. H. Hawkins, Mexico, to T. Reilly, New Orleans, April 26, 1822—"General Wilkinson has stopped at Puebla to recover from an indisposition produced by fatigue. . . .", In "Austin Papers", *op. cit.*, 2:500; John Sibley, Natchitoches, to J. E. B. Austin, June 6, 1822, *Ibid.*, 2:525.

[32] Stephen F. Austin to J. H. Hawkins, May 1, 1822, *Ibid.*, 2:505; Wilkinson to Thomas Aspinwall, April 23, 1823, in *Bulletin*, New York State Library, 3:362.

Austin, who was also seeking land grants in Texas, a letter of introduction.[33]

Though the hope of negotiating collections for debts due merchants and others in New Orleans for advances made to Mina and the later revolutionists originally brought him to Mexico, General Wilkinson, likewise, hoped to secure either cash or land grants or both as a result of his efforts. His presence in the City of Mexico caused the circulation of the most fantastic rumors concerning him. First, reports were that he had died on the road between Puebla and the City of Mexico, "but the report arose from the death of General (James) Long, (an American filibuster) who was killed by a sentinel at the door of Congress. . . ." This report was no sooner proven false than another arose to the effect that Wilkinson was ". . . in an employment for which he received a salary at the rate of 15,000 dollars per annum. . . ." This too was soon disproved. From England came a report that ". . . The knowledge of (the) state of things (in Mexico), it is said, induced the Washington Government to send *the wily General Wilkinson* (to Mexico) not only to further the interests of the United States generally, . . . but also to endeavor to counteract and remove fondness for monarchial situations. . . ." At the very time that this last rumor was making the rounds, General Wilkinson and William Taylor, the American Consul in the City of Mexico, were among "the list of guests at the grand dinner given (July 21, 1822) . . . by . . . the Mexican Secretary of State . . . to celebrate the coronation of Iturbide as the first Emperor of Mexico."[34]

Because of conditions and true to his habit of years, Wilkinson deemed a policy of watchful waiting more likely to succeed than an active and vigorous participation in the affairs of the newly formed State. He would sit on the sidelines, or perhaps in the players' bench, and watch the course of events, in the meanwhile offering hints and making "Observations" that would not compromise him in case of the overthrow of the government, but which would secure to him a position of dignity and responsibility should the government survive and become firmly established. To secure detachment and to enable freedom of action, he established himself in a comfortable cottage on the outskirts of the City from which

[33]Austin to Hawkins, May 1, 1822, "Austin Papers", *op. cit.*, 2:505; Sibley to Austin, June 6, 1822, *Ibid.*, 2:525; *National Intelligencer*, June 21 and Oct. 24, 1822; *Albany Argus*, April 15, 1823; Wilkinson's letter of introduction for S. F. Austin, "Austin Papers", *op. cit.*, 2:516. On May 25, 1822, Austin made formal written application to Jose M. Herrera, Minister of State, for a grant. He accompanied his request with Wilkinson's letter of introduction of May 15, 1822, *Ibid.*, 2:519.

[34]*National Intelligencer*, June 25, Aug. 7 and 29, Oct. 12 and 24, 1822.

he could watch the current of events without himself becoming involved. From this vantage point he could carry on his negotiations for the settlement of "certain claims of merchants of New Orleans . . ." for support given General Mina and the later revolutionists during the period of their preparations.[35]

In this first year of his stay in Mexico, General Wilkinson was reported to have ". . . lived retired, taking no part in politics, and held in very high esteem. . . ." In the meanwhile, he busied himself with correspondence with friends in New Orleans and with prominent men throughout the United States, lobbying with them for intervention in Mexico by the United States' government with a view to ultimate annexation. One of his first acts was to write to President James Monroe a long letter describing conditions in Mexico and the state of the government and offering himself as one qualified ". . . to serve our own country & to promote the solid Interests of this infant Empire. . . ." In the matter of representation, however, Monroe had other plans. He was disposed, first, to determine just how strong and firmly established the new government had made itself and to decide whether it was likely to weather the storms of revolutionary revolt and partisan opposition. To secure information to guide him he preferred an agent of his own choosing, rather than one noted, as Wilkinson was, for coloring his reports with remarks reflecting credit to himself and only secondarily concerned with reporting the true state of affairs. Monroe's choice fell on Joel R. Poinsett, of Charlestown, South Carolina, a politician of note and a personal friend and supporter. Poinsett's tour of observation was to be unofficial, but it was hoped substantial data and information would be secured which would serve as an accurate guide in determining the decision of the administration.[36]

Poinsett sailed from Charleston in the late fall of 1822, in the United States Frigate *John Adams*. On his arrival in the City of Mexico in October, one of his first acts was to visit General Wilkinson "who received me in his kindest manner." Wilkinson, without reserve, gave Poinsett an "interesting account of the country", and discussed with him the state of the government and the proper course he though the United States should pursue. After

[35] *National Intelligencer*, May 22, 1822; *Albany Argus*, Feb. 7, 1823.

[36] *Albany Argus*, Feb. 7, 1823; Wilkinson to Madison, May 11, 1822, *A. L. S.*, Library of Congress; C. J. Stille, "The Life and Services of Joel R. Poinsett," in *Pennsylvania Magazine of History and Biography*, Vol. XII.

a tour of the central section of the country Poinsett sailed from Tampico the first week in January, 1823, and by the end of the month he had delivered his report to the President.[37]

Thinking to dispose of General Andrew Jackson, then becoming widely spoken of for the presidency, Monroe offered him the Mexican mission. Jackson, whom Wilkinson thought "as little qualified for the business of diplomacy as any man of the least distinction in our western wilds," promptly declined the proffer. When news of Jackson's rejection of the mission became known, General Winfield Scott, who had previously applied for the appointment, renewed his application. He based his claims for consideration, both on his personal acquaintanceship with the Mexican rulers and on his wide travels and contacts with men prominent in public life both in the United States and Europe. Monroe, however, had other plans. The appointment was offered to Senator Ninian Edwards of Illinois, who accepted. He had got well started on his journey to the City of Mexico when he was recalled as a result of the so-called "A B C" exposures. Poinsett was again offered and reluctantly accepted the mission, but it was June of 1825 before he reached the Mexican capital city.[38]

In the meantime Wilkinson was the most prominent American in the country, though he wrote that he was constantly in expectation of leaving it for his home on the Mississippi. On account of the unsettled political conditions and because of the lack of a cohesive and effective land policy there was much delay in securing any satisfactory action with respect to the settlements of the claims which Wilkinson represented or of land grants which Wilkinson expected to secure. Because the government had no cash and because its securities had no marketable values worth the name, all claims could be settled for only in land of which there was an abundance. The change of government, as a result of the successful revolt against the Spanish rule in the fall of 1821, had brought an avalanche of claims against the Revolutionary government. Likewise, an army of speculators and prospective settlers seeking land grants had poured into the City of Mexico. As a result there was much confusion and bitter controversy for such favors as the new government might extend. This situation, combined with uncertainty

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[37]J. R. Poinsett, *Notes on Mexico*, p. 46; J. H. Smith, "Poinsett's Career in Mexico", in *Proceedings*, American Antiquarian Society, 24:77 *ff.*

[38]Wilkinson to Aspinwall, April 23, 1823, *Bulletin*, New York Public Library, 3:364; Scott to Monroe, April 12, 1822, Simon Gratz *Papers;* Scott to Monroe, July 19, 1823, Monroe *Papers*, New York Public Library.

of power and thievery and corruption on the part of the new rulers, not only prevented any settlements or awards, but soon brought about the downfall of the new-born Empire.[39]

During these unsettled days of Iturbide's rule, General Wilkinson hopefully maintained his contacts and continued desultory, but ineffective, negotiations. While waiting for some action, he amused himself in the role of a self-appointed adviser to Iturbide. Among other things, he wrote a lengthy set of "Observations" relative to commerce and tariffs. This paper, though in his usual extended and verbose style, shows a wide knowledge of the practical workings of trade laws and movement. Later, on November 18, 1822, he again wrote Iturbide, this time tendering some "Reflections Relative to the Province of Texas." In this Memorandum, Wilkinson suggests that "an official of honor, fidelity, intelligence, adaptability, and political sagacity" be placed in charge of the colonization efforts there. Evidently, this was merely a polite recommendation of himself for the position. Nothing appears to have resulted from either of these suggestions. Iturbide had other important and more personal matters claiming his attention.[40]

All through the year 1822 Wilkinson was hopeful of being able to conclude his negotiations with the volatile and uncertain Mexican government. In November it was reported that he "was . . . prosecuting certain claims of merchants of New Orleans with every prospect of success." It was expected that "the claims would be liquidated by grants of land. . . ." To accelerate his negotiations, on December 22, 1822, Wilkinson addressed a letter in French to Jose Herrera, Minister of Foreign Relations, which he labelled: "Reflections touching sundry claims against the Mexican Government" by citizens of the United States for advances made to General Mina and other persons "during the late Civil War." Late in this same month, he also wrote one of his friends in Baltimore that he was ". . . making an Effort to acquire a Precious tract of land in the province of Texas, divinely situated on the Coast of the Guelph. . . ." In confidence, he offered his friend an opportunity to participate "in the project", saying "You shall hear from me the moment a decision takes place, which must be in ten days, as I return to (my family in New Orleans) twenty days hence. . . ." In spite of this glowing statement, "the Precious tract" seems to have been rather the figment of Wilkinson's flexible imagination

[39]E. C. Barker, *The Life of Stephen F. Austin*, Chaps. IV and V, *passim*.
[40]Wilkinson to Iturbide, Sept., 1822, *Hispanic American Historical Review*, 1:164-176; Wilkinson to Iturbide, Nov. 18, 1822, *Ibid.*, 1:175-180.

than a tract definitely chosen. Whatever the facts, we find Wilkinson writing to Stephen Austin about the time of Iturbide's overthrow, several months later, asking him to suggest ". . . the location of a good tract for the settlement of 300 families so remote from the sea coast as to be exempt from the epidemicks . . . and at the same time as convenient to markets, & easy of access as may be. . . ."[41]

He was doomed to disappointment. Though he had "no apprehension" that "the reigns of government (would) fall or be torn from the hands of Augustine," within less than three months from the date of the writing of this letter, Iturbide's house of cards had come crashing down, the Emperor had abdicated, and a new revolutionary government headed by Bustamante ruled the land, or that part of it in which law and order could be enforced. Wilkinson found it necessary to begin all over.[42]

After the event Wilkinson became persuaded of the hollowness of Iturbide's character and of his pretensions to position and power. He wrote his friend, Thomas Aspinwall, then United States Consul at London: "Iturbide has cheated his most intimate military associates, demonstrating in the last stage of *Royalty*, more of the Lamb than the Lion—more of the Spinster than the Soldier of courage & resource—by a ferocious sanguinary disposition in War, he acquired the character of dauntless Intrepidity—by a fine Person & the most seducing address he established strong prepossessions—and by the cunning of silence he imposed Himself for a Man of Intelligence—I have myself been deceived as to his physical Energy & his moral faculties, but have known for eight months, nay Eleven months, that he was made up of Ambition & Vain glory, & was a stranger to Integrity."[43]

Until the chaos of revolution had subsided, Wilkinson passed the time corresponding with influential friends in the States and "in composing a work on Mexico: historical and geographical." He was urged to this work by his old friend and supporter, William Duane, who wrote him while on a journey through Colombia, South America. Likewise, because he thought that Baron Humboldt's maps made some twenty years previous contained many "errors

[41] *National Intelligencer*, Jan. 26, 1823; Wilkinson to Herrera, Dec. 22, 1822, quoted in H. E. Bolton, *Guide to Materials for the History of the United States in the Principal Archives of Mexico*, p. 244; for Mina's Expedition, *cf.* Robinson, *Memoirs of the Mexican Revolution*, *op. cit.*, pp. 43, 259; Wilkinson to J. S. Williams of Baltimore, Dec. 22, 1822, *A. L. S.*, courtesy Thomas B. Streeter, Morristown, N. J.; Wilkinson to S. F. Austin, March 6, 1823, "Austin Papers", *op. cit.*, 2:533.

[42] *National Intelligencer*, May 8 and 10, 1823; Iturbide abdicated March 19, 1823.

[43] Wilkinson to Aspinwall, April 23, 1823, *Bulletin*, the New York Public Library, 3:362.

and omissions" he proposed to correct and revise them. These "thoughts," however, seem to have been largely day-dreams as no publications were ever made. Soon more serious matters again claimed Wilkinson's attention."

In order to conciliate and flatter the new Mexican Congress, so as to pave the way for a favorable reception of his petitions for claims settlements and land grants, Wilkinson presented this body with a portrait of George Washington. He had brought it with him, when he came from New Orleans in the spring of 1822, but had not presented it because of the delay in the election of a Congress that, in his opinion, would function as a representative of the people rather than of the Emperor Iturbide. The setting up of the new government following Iturbide's overthrow and the popular election of a Congress seemed to afford a proper opportunity for the presentation. The portrait "was received with marked consideration, and, by a resolution of Congress, it was to have been suspended in a conspicuous part of the Representatives Hall." Whether this was ever done is not of record. In the meantime, as a result of successive revolutions, fires and general destruction all trace or record of the portrait has been lost.[45]

Following the presentation of the portrait, the claims were received by the new government "with becoming respect, but Congress declined acting on them and referred them for decision to the new Congress, which was to have assembled," the first of December, 1823. Thus the petitions slumbered for nearly a year before they were again taken up for consideration. Wilkinson, from time to time, filed other claims, but all of them seem to have received a like fate—reference to a committee. One such claim was for the relief of "the widowed children of two citizens of the United States." It "was accompanied by a bold and feeling appeal to the benevolence" of the Congress, but beyond being "almost constantly occupied in wielding his pen" in deserving causes and presenting petitions, Wilkinson was able to bring no nearer the day of his return to his family and home. He was "detained . . . by delusive assurances . . .," though he lived in constant hope of a

[44]Duane left New York, Oct 2, 1822, and returned July 4, 1823. It is not apparent that he visited Mexico though he had been in correspondence with Iturbide at the time of his elevation to power. *cf.* William Duane, *A Visit to Colombia*, pp. 2, 622; Iturbide to Duane, July 4, 1822, in *Historical Magazine*, series 2, 4:67, 70-71; *Albany Argus*, July 4, 1823; *Ibid.*, July 11, 1823; De Witt Clinton to Wilkinson, July 19, 1823, Clinton *Papers*, Columbia University Library.

[45]*Richmond Enquirer*, Dec. 13, 1823; *Diario Historico de Mexico Por el Lic. D. Carlos Maria de Bustamante*, entry July 22, 1823, 1:436; J A. Mateos, *Historia Parliamentaria de los Congresos Mexicanos*, entries, July 22 and 30, 1823, 2:451, 457; Wilkinson to Monroe, May 11, 1822, Monroe *Papers*, Library of Congress.

speedy and satisfactory outcome of his negotiations. He yearned for his "dear Celestine and our beloved Son and Daughter who reside in New Orleans." In June, 1824, Nathaniel Cox, one of those whose claims Wilkinson was endeavoring to collect in one form or another, wrote from New Orleans, to Austin: ". . . General Wilkinson has not yet returned to Louisiana, nor do we expect him for some months yet—he remains as he says in letters to his wife and (Joseph Biddle Wilkinson), to close the accounts of Individuals who put claims into his hands for advances to the Republic many years ago and which, for all I can learn, remain as much unsettled as the day he reached Mexico. . . ."[46]

As the weeks lengthened into months, Wilkinson became more critical of the new government. He continued his correspondence. To his old friend, General Samuel Smith of Baltimore, he wrote, in January, 1824, criticizing the conduct of the government and people. Several months later he wrote ex-President Jefferson, then living in retirement at Monticello, a long "Confidential" letter, detailing his experiences with the dilatory and unstable governments with which he found it necessary to deal. He was "perplexed to decide whether (he had) been duped or deceived most by the Imperial or Republican governments . . ." but was at last able to write on March 17, 1824, that "the Congress established the principles on which (his) claims are to be adjusted." He was hopeful that he would not be delayed for more than two or three months longer."[47]

By mid-summer Wilkinson felt optimistic enough to write Jefferson that "Things here *appear* to be going well. . . ." Perhaps the new land Law of 1824 had produced this optimism. This Law provided that "the several States of this ill-starred and tumultuous confederacy, misnamed the Mexican Republic, might enter into arrangements according to their own discretion . . . for the popula-

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[46] *Richmond Enquirer*, Dec. 13, 1823; *Louisiana Courier*, Nov. 15, 1823; Wilkinson to Aspinwall, April 23, 1823, *Bulletin*, New York Public Library, 3:361; Nathaniel Cox to S. F. Austin, August 3, 1824, "Austin Papers", *op. cit.*, 2:808; Wilkinson's first wife, Ann Biddle Wilkinson, died in New Orleans, Feb. 23, 1807. Her youngest son was Joseph Biddle Wilkinson. *cf.* Thomas Robson Hay, "Letters from Mrs. Ann Biddle Wilkinson from Kentucky, 1788-89," *Pennsylvania Magazine of History and Biography*, 56:33 ff. Wilkinson's second wife was Celestine Laveau Trudeau, the daughter of Carlos Trudeau, a land owner and planter and Surveyor General of Louisiana under the Spanish Dominion, and his wife Charlotte Perault. She was born in New Orleans, Aug. 15, 1784; married in New Orleans in the Roman Catholic Convent of St. Ursulines, March 5, 1810; died in Texas, probably in Austin, in 1859. By his second marriage, Wilkinson had three children—twin daughters, born Jan. 23, 1816, one of whom died in infancy, and a son, born in 1819 or 1820, who apparently did not live to maturity. The second Mrs. Wilkinson was a cousin of Mlle. Clarice Duralde, the second wife of William C. C. Claiborne, whom he married Sept. 27, 1806, and who died Nov. 29, 1809.

[47] Wilkinson to Smi'h, Jan. 27, 1824, abstract quoted in Catalogue no. 376, American Art Association, April 13, 1921; Wilkinson to Jefferson, March 21, 1824, Jefferson *Papers*, Library of Congress.

tion of their vacant territories by colonists from abroad. . . ." Because this arrangement, temporarily at least, united the province of Texas with that of its neighbor, Coahuila, applications for land grants in this vast territory came before the legislature of Coahuila. It was not until March 24, 1825, however, that a law was finally passed which provided for and authorized the introduction of foreign settlers through the instrumentality of officers, or promoters, to be called Empresarios. To each of these officers an allotment of territory was to be made, on condition of procuring its settlement by a stipulated number of families within a given period. For the fulfillment of these conditions, each Empresario was to receive a compensation in lands proportional to the number of colonists introduced and permanently settled.[48]

Pending final enactment into law, Wilkinson and others lobbied industriously for preference. As one writer commented: ". . . It argues not a little in favor of his own skillful management that of all . . . petitions, (General Wilkinson's) alone was finally acceded to, at that time, by the Mexican authorities. . . ." The claimants were so numerous that another writer expressed the opinion that ". . . the Austin Grant will have as much to fear from the encroachment of the new grantees (claimants) as from any other cause. . . ."[49]

Meanwhile, in a postscript to a letter of September 1, 1824, to his son in New Orleans, General Wilkinson wrote: ". . . Glory to God on high, I have just made a contract which will I hope enable me to leave this sad country in two or three weeks. . . ." But fate was to prevent his ever again seeing his family and native land. Though his life hung "by a thread" and though he vowed to ". . . live if I can, through the mercy of God, to see all my objects accomplished . . .," the "precarious" state of affairs existing in the country and the dilatory methods of the Mexican government combined to produce one delay after another. While waiting for some positive action, Wilkinson busied himself with investigations into the possibilities of silver mining and the procurement and delivery of suitable equipment into the nearly inaccessible localities in the mountainous interior of the country. In this effort he was handicapped by the "attempt (at) the reconquest of the country" by the

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[48]Wilkinson to Jefferson, July 20, 1824, Jefferson *Papers*, Library of Congress; H. S. Foote, *Texas and the Texans*, 1:222; E. C. Barker, *Life of Stephen F. Austin*, chapters V and VI, *passim*, and p. 137, note 7; E. C. Barker, *Mexico and Texas*, pp. 11 ff. for Texas land laws.

[49]M. A. Holley, *Letters of an American Traveler*—letter of Dec., 1831, from Bolivar, Texas, p. 157; T. Reilly to J. H. Hawkins, April 26, 1822, "Austin Papers", *op. cit.*, 2:499.

Spaniards; by the opposition of British interests; by the attempt of Iturbide to regain control of the country; and by the competition of other land and machinery speculators from the United States.[50]

Throughout most of his stay in Mexico, General Wilkinson depended on funds furnished by his son, Joseph Biddle Wilkinson, and his associates in New Orleans. As security for these advances, General Wilkinson sent his son land attachment "guarantee(s)." In addition he was "promised day after day" a payment of $15,000 in settlement of one of the larger claims he was urging on the Mexican government. Other claims, notably those of Cox & Elkins of New Orleans, he considered "not worth a groat," stating that if he "had understood their merits" he would "never have undertaken" them. He also had claims of friends in Baltimore and had "commutted the whole for land (and) thus . . . (had) gained, six or eight hundred thousand acres, by my own Expences, sufferings & Sacrifices. . . ." As usual, however, delay succeeded delay, funds were slow in coming and "dire necessity" reduced him to most straitened circumstances. To add to his troubles some of the other land speculators with whom he was associated and to whom he had advanced funds, "swindled" him unmercifully. He even, unsuccessfully, attempted to have one of them arrested as he passed through New Orleans.[51]

As added security for advances made him, General Wilkinson sent his son "a provisional grant for 200,000 acres of land located within the tracts in Texas . . . at my option. . . ." There were two of these of consequence, "The Red River Tract comprised within territory now covered by the City of Galveston; the other known as the Yellow tract lay farther to the east and was situated on Trinity Bay about forty miles from Galveston, at Crow's Ferry on the Sabine River. . . ." It was hoped to commence active colonization in the fall of 1826. News of these grants caused wide comment in the newspapers of the United States, principally as a result of the wide exchange in other papers carried on by the "Barking Editor" of the *Arkansas Gazette*. Though skeptical of the ultimate success of Wilkinson's colonization efforts it was hoped that he ". . . would meet with better success than has fallen to the lot of a large majority of those who have gone before. . . ."[52]

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[50]Wilkinson to Joseph Biddle Wilkinson, Sept. 1, 1824, *A. L. S.*, courtesy Mrs. Henry T. Staats, San Gabriel, California.

[51]*Ibid.*, Wilkinson to Joseph Biddle Wilkinsn, Feb. 15 and 25, and March 24, 1825, *A. L. S.*, courtesy Mrs. Henry T. Staats, San Gabriel, California.

[52]Wilkinson to Joseph Biddle Wilkinson, Feb. 25, 1825, *A. L. S., op. cit.; Louisiana Gazette*, Sept. 11, 1825: *Arkansas Gazette*, quoted in Barker, *Life of Austin*, p. 97, note 29; J. E. B. Austin to Mrs Emily M. Perry, Oct. 28, 1825, "Austin Papers", *op. cit*, 2:1230.

In general, there was great opposition to the settlement of Americans in Texas both by people in the United States and by Mexicans and Spaniards. The former opposed "the inexplicable folly which dragged worthy families from assured comfort and prosperity . . . to the insecure wilderness of Texas. . . ." The latter opposed grants to Americans both for selfish reasons and ". . . lest they should rise and deliver the province to the United States. . . ." For example, a plan presented by Wilkinson caused de Bastrop, one of the rival seekers of grants, to write: ". . . This cursed plan threatened to upset everything . . ." so far arranged.[53]

In order to speed along the final approval of the preliminary grants he had secured, General Wilkinson, at the suggestion of his friend Joel R. Poinsett, the newly arrived American Minister, wrote him soliciting a letter of recommendation to be presented in his favor to the Governor of Coahuila and Texas. To insure that Poinsett would say the desired thing Wilkinson accompanied his request with a suggested endorsement. Whether Poinsett agreed with Wilkinson's own estimate of his qualifications for favor and simply forwarded this estimate over his own signature as American Minister is not apparent. In any case the General stayed on in the City of Mexico lobbying for recognition and preference both with respect to permanent certification of preliminary grants and the award of others.[54]

As General Wilkinson grew older and as a refuge from his troubles, he came more and more to rely on the help and the blessings of his God. This is evidenced particularly in his letters of this period. As a life member of the American Bible Society it was only natural that he should seek to aid in spreading the Gospel and in building up a religious attitude on the part of the Mexican people. He seems first to have interested himself in 1824 in the distribution of Biblical literature sent by the American Bible Society. The Reports of the Society do not indicate any large distribution of Bibles in Spanish America, including Mexico, nor do they contain any reference to Wilkinson in connection with shipments or payments for such distribution. However, "Previous to (his) departure for Mexico (General Wilkinson) was conversed with by a respectable clergyman . . . who *solicited* him to make inquiry as to the probability of introducing the Bible into Mexico without offence to the civil and ecclesiastical authorities of the coun-

[53]Bastrop to S. F. Austin, *Ibid.*, 2:1088; Barker, Life of Austin, pp. 97, 137.
[54]Wilkinson to Poinsett, July 9, 1825, Poinsett *Papers*, 2:179; also quoted, in part, in Rives, *Mexico and the United States, op. cit.*, 1:138, note 1.

try. . . ." On October 25, 1825, Wilkinson advised that his "inquiries" regarding Bible distribution in Mexico had been "altogether favorable . . . and expressed his willingness to receive a large consignment of copies of the New Testament, of the rapid sale of which he was so confident as to authorize a draft upon himself for the whole amount at 30 days sight. (Only) Intelligence of the death of General Wilkinson . . . prevented the Society from availing themselves of the proposal thus made. . . ." From the foregoing it is plain that Wilkinson never actually acted as an agent for the American Bible Society and that he did not go to Mexico with any such intentions. His willingness to honor ". . . a draft upon himself for the whole amount at 30 days sight . . .," refutes the oft repeated statement that, at this time, he was destitute and penniless.[55]

In spite of a strong constitution and a rugged physique, the hardships of years had made heavy inroads on his strength and health. His experiences in Canada in the winter of 1813-14 had taken its toll; the years on the Mississippi working in the hot sun and in malarial surroundings were a severe tax on his vitality. Since coming to Mexico, Wilkinson had scarcely enjoyed a day free from sickness and pain. As was the custom of the day and a habit that he had acquired, he occasionally resorted to opium or laudanum for relief from pain, which in his case was due to a chronic diarrhoea. As one friend wrote, the affliction "proved more than usually obstinate, and though yielding for a time to medicine and diet . . . continued to assail him. . . ." During the month of December, 1825, the General was "so enfeebled, by his disease, that he (was) unable to take his usual exercise on horseback. . . ." During the summer of 1825, he had taken residence "on the La Vega, . . . but his condition was now so broken down, and his stomach so impaired" that his friends "despaired of his recovery. Nothing but large doses of opium could at all mitigate his disorder. . . . (Finally) He died on the night of the 28th (of December, 1825). . . ." His body was brought to the house "of the American Minister, Mr. Poinsett. . . . Interment took place the afternoon of December 29th in the Parish of San Miguel" in the City of Mexico. "As an old soldier of the Revolution every effort was made to procure for him military honors, but these were peremptorily denied on the plea that such honors were not even granted to . . ." Mexican

[55]James Milnor, Secretary for Foreign Correspondence, American Bible Society, New York, to J. R. Poinsett, City of Mexico, March 10, 1826, *Letter Book*, American Bible Society, Foreign Correspondence, p. 40; *cf.* also *Tenth Report*, American Bible Society, dated May 11, 1826, p. 24.

officers and other celebrities. "He was followed to the grave by the most distinguished military and civil officers and by all the respectable foreigners of the City."[56]

From the foregoing contemporary account it is quite evident that General Wilkinson, though far from home and family, did not die in abject poverty, a slave to habit, friendless, neglected and alone. He was buried in the cemetery of the little Roman Catholic Church of the Parish of the Archangel San Miguel in the City of Mexico, but his grave was only marked with a wooden cross. In 1860 when the graveyard was closed, because of the lack of a permanent marker, Wilkinson's grave could not be identified. Because of this impossibility of identification, his remains, together with others similarly obscured, were re-interred in a common grave under the church floor. This lack of identity came to official notice in 1873 when it was suggested, officially, that his body be exhumed for burial in the Mexico City National Cemetery. A similar investigation was repeated in 1900 with like results.[57]

General Wilkinson had "constitute(d)" his son, Joseph Biddle Wilkinson, his son-in-law, Robert Andrews, and "my Celestine", his wife, as his "Heirs and Executors under a proper and equitable distribution of (my) property. . . ." Apparently, Wilkinson's son went to the City of Mexico to settle his father's affairs and to complete arrangements for fulfilling the conditions of General Wilkinson's grants of land in Texas, but there is no evidence that he was successful. In the following year, Mrs. Wilkinson appointed Poinsett as her "attorney-in-fact" in all matters pertaining to her interest in General Wilkinson's property and debts in Mexico.[58]

Thus ended a most amazing career that has few, if any, counterparts in American history.

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[56]Communication to *Niles Register*, May 11, 1826, 30-18; Account of the "Death of General Wilkinson": extract letter "from a gentleman from Baltimore, dated Mexico", Dec. 30, 1825, communicated to the Editor of the *Baltimore Gazette*, quoted in *National Intelligencer*, Feb. 21, 1826; Mr. J. R. Poinsett wrote a brief account of General Wilkinson's death, dated Jan. 6, 1826, quoted in *National Intelligencer*, Feb. 8, 1826.

[57]"Deposition by the Curate of the Parish of the Archangel of San Miguel of Mexico . . .", quoted in *Gulf States Historical Magazine*, 1:288; Communication of W. W. Belknap, Secretary of War, of Dec. 5, 1872, in *Senate Executive Document*, no. 6, 42nd Congress, 3rd Session—This document indicates that the Senate directed that the Secretary's communication lie on the table and that it be printed; letter to the writer, from Major J. T. Harris, office of the Quartermaster General, U. S. Army, Dec. 4, 1930; account United States National Cemetery in the City of Mexico, New York *Herald Tribune*, July 8, 1934.

[58]Wilkinson to Joseph Biddle Wilkinson, Feb. 25, 1825, *A. L. S., op. cit.*; C. B. Penrose, San Felipe de Austin, to S. F. Austin, Saltillo, Sept. 10, 1827, "Austin Papers", 2:1679; A legal document in the Poinsett *Papers*, 18:76, dated at New Orleans, April 2, 1828; Some years later General Wilkinson's widow was granted 160 acres of bounty land on Warrant 7051, under the Act of March 3, 1815, letters to the writer from the Department of the Interior, General Land Office, Dec. 7, 1933, and from Veterans Administration, March 8, 1934.

A NEW ORLEANS LADY OF LETTERS

By JOHN S. KENDALL

When in January, 1932, Grace King died in her big, old-fashioned house with its yellow-and-white walls overlooking the tranquil expanses of Coliseum Place, New Orleans suffered the loss of something more than an individual life, important though that life happened to be. With Grace King came to an end a great social tradition and a great literary epoch. She was the last representative of that brittle, exquisite Southern civilization which G. K. Chesterton has described as the most elegant and aristocratic that our modern world has known. She grew up in its shadow, and she prolonged its souvenir down through the years, long after it had succumbed to a new and very different social order. Over the teacups in her spacious, parquetry-floored drawing-room, with its walls covered with pictures and its table littered with books, she entertained on Friday afternoons a small, distinguished company, chiefly those who, like herself belonged to the old regime; and as its ranks inevitably thinned until she herself was almost the sole survivor, the memory of the grand old Southern life of the days prior to the Civil War grew fainter, more remote, more unreal; and at last, when death called her, too, she slipped out of a world which no longer knew any of her ideals.

Grace King grew up also in the light of a literary tradition which has evaporated from our country within the last twenty-five or thirty years. When her genius was formed, it was under the influence of the masters of literature—Macauley, Prescott, Motley, Froude, Green, Gayarré among the historians; Dickens, Thackeray, Emerson, Longfellow, Sidney Lanier and their contemporaries in the other fields of literature. She wrote under their spell. Her work was a little old-fashioned, but it was fine and stately, and dignified and appropriate; like the rustle of starched petticoats and the perfume of lavender—neither of which have a place in the world today. She inherited, too, the splendid tradition of the great masters of French literature. She was a disciple of Michelet, Coppée, and Daudet. When she passed away, that vivify-

ing influence also disappeared from American letters. Yes, when Grace King died much more than her own life was extinguished. A whole host of subtle associations, achievements, ideas and traditions went out like snuffed candles, leaving a vacant darkness behind.

I first met Grace King in 1895, in connection with the death of the historian Gayarré, whom we both knew and admired. She was already a celebrated person. Her "Balcony Stories" and "Bienville" had recently been published. Her name was known in literary circles throughout the United States, and in England, was mentioned respectfully along with those of Thomas Nelson Page, George W. Cable, and the other American writers who were building up the "regional" novel in the South. Thereafter, for nearly forty years, I had the pleasure of her friendship, though it was not till near the end of her long, laborious career that we were at all closely associated. After the establishment of the Louisiana Historical Quarterly, we found ourselves co-members of the advisory editorial board set up about 1923 by its editor, the late Henry P. Dart; and it was a delightful custom which Miss King promptly initiated, for us to meet from time to time at her home to discuss matters of editorial policy. How briskly and entertainingly the conversation flowed on these occasions! In the glow of the softly-shaded lights, the accomplished authoress, our senior in years as in attainments, sat in her spacious arm-chair, her white locks heaped carelessly above her noble brow, and her eyes flashing eagerly from one to another of the little group as question after question connected with the early days of Louisiana came up, was debated, and more or less authoritatively settled.

These meetings brought together the late William Beer, librarian of the Howard Library, one of the most gifted yet most diffident men of his generation; Mr. Dart, a famous corporation lawyer, the intimate friend and trusted advisor of Chief Justice White, whose eulogy he pronounced before the United States Supreme Court; and Miss King's two devoted sisters, Nan and Nina, both much younger than herself, who made their home with her and whose asiduous affection made possible the elder's complete dedication to study and to writing. Alas, it is not likely that New Orleans will again know such gatherings. Such fine talents as those I have enumerated are not often to be found in any American

community—least of all in the cities of the Deep South, obsessed as they are nowadays with commerce, and ridden with local political problems.

In the superb portrait of Miss King painted by Wayman Adams a few years before her death, and now hung in a local gallery, she is represented facing the spectator in a characteristic attitude. She occupies her habitual chair in front of one of the long mirrors that formed so distinctive a feature of her drawing-room at Coliseum Place, and in the background the artist with an admirable appreciation of their role in the life of their famous sister, has introduced the figures of Nan and Nina King. These two ladies form an integral part of all my memories of Grace King. They were always the appreciative audience, the helpful lieutenants, eager to discharge the onerous secretarial tasks inevitable in the execution of all literary enterprises; deciphering the extraordinary hieroglyphs which with Miss King passed muster as handwriting; and on those charming Friday afternoons when so much that was distinguished in literary and artistic New Orleans foregathered for tea and conversation at her residence, it was they who ministered to the comfort of the guests, and saw that we were duly provided with the steaming beverage and those marvellously thin, extraordinarily delicious wafers manufactured by the nameless sable culinary artist who presided over the family kitchen. Miss Nan followed her brilliant sister to the grave within two years, and now there lingers in the haunted apartments of the big old house, crowded with its relics of wonderful friendships, only the youngest sister, Miss Nina, perhaps the most lovable of them all.

Grace King lived chiefly in her intellect. I do not mean that she was devoid of ordinary human emotions; far from it. She was an exemplary daughter, a devoted sister, but her chief interest was in her art and in the associations which it entailed. She seems to have enjoyed few or none of those intimacies with other girls which constitute so charming a feature of the average young thing's maidenhood; and it is of record that she did not in her youth, nor in her young womanhood, care particularly for the society of men. She was red-headed and not pretty in the ordinary sense of the word, though her face, with its animated and highly intellectual expression must always have possessed a certain attractiveness. There were suitors, several of them—one a very distinguished member of the United States Senate—but it

was on the cards that she should not marry. However, as she grew older, she developed what for lack of a better term we may call the "salon sense"—that faculty which has burgeoned so frequently and so brilliantly in France and so rarely in the United States—that instinct for social arrangement and organization which keeps permanently together a circle of interesting and mutually stimulating men and women. Grace King succeeded in that delicate task. She came to like to be surrounded by people. She enjoyed the give and take of clever conversation. But up to the very end of her life the people to whom she accorded her friendship were those who primarily appealed to her intelligence. A mutual taste in literature; a shared passion for the "mot juste," a kindred interest in life as an art and as an expression—these rather than the romantic response of heart to heart were the bases upon which she erected the rich and exquisite structure of friendships that enriched and glorified one part of her many angled experience.

Grace Elizabeth King was born in New Orleans on November 29, 1853 in the building on Camp street which now bears the municipal number 936. It is one of a row of identical three-story brick residences near Howard Avenue (in those days Delord), almost directly opposite the Howard Memorial Library. The edifice has undergone surprisingly little change in eighty years, except for the inevitable dilapidation incident to the gradual transformation of an erstwhile elegant residence neighborhood into a second-rate commercial district. In 1853 the house like all of those in this vicinity, was eminently respectable, with its brick stoop flush with the sidewalk and its windows, three on each story, closely shuttered to exclude the blazing Southern sunshine. Next to the King mansion at number 930 was the home of the wealthy and beautiful widow Buchanan, who eventually married the historian Gayarré. It was from the second-story balcony of this house that Mrs. Buchanan's only child fell to the sidewalk and was instantly killed—a tragic event the recollection of which still lingers in the neighborhood.

The King family occupied the mansion here shortly after Mr. and Mrs. King were married, in 1848. Here all of their children were born. Here they continued to reside down to that piteous hegira in 1863 which Grace King describes so movingly in her "Memories," when they abandoned the city for a home on L'Embarasse plantation.

The Kings are by way of being an old New Orleans family. The first of them to establish himself in New Orleans was Grace's father, William Woodson King, who came to the city about 1829, a very young man "fresh from the law-school of the University of Virginia." William King's father, Edmund King, was a Georgian. Early in the last century he migrated to Alabama, settling near Montevallo. At that date land in Alabama was absurdly cheap, and Edmund King had a passion for owning land. He invested heavily in Montevallo. At one time he owned the site of the present city of Birmingham. When he died in April, 1865, almost at the very hour when Lee surrendered at Appomattox, he owned the property where the Alabama College for Women now stands. Some years later the widow of his son, Frank, to whom this particular piece of land descended, presented it to the state of Alabama. The campus of the new college was so oriented as to encompass the tombs of Edmund King and of his two sons killed in the Civil War. One would think that these memorials would have been preserved with pious devotion; but not so. With the singular ingratitude for which colleges no less than republics are noted these graves were promptly abandoned to a state of neglect which reputedly has continued to the present moment.

Among the estates acquired by the elder King was a plantation in Louisiana. It lay about 25 miles from New Iberia, in the Parish of St. Martin. This property he transferred to his son, William, some years previous to his death. It was L'Embarrasse, so called because early in its history, some rotting cypress trees collapsed into the bayou that traversed the place, choking the stream and stopping navigation. There was no money in the King exchequer then to pay for removing these obstructions—the "embarasse," as the French-speaking population of that region called it—and thus the plantation acquired its picturesque and suggestive designation. It was to this remote spot that Mrs. King brought her six little children when they fled from New Orleans, in the dreary days when Ben Butler was teaching the city what it means to be conquered territory.

William King was tall, slender, with dark hair and eyes—delicate of constitution and scholarly in tastes. He began the practice of law in New Orleans as soon as he arrived and found it a hard and not very profitable undertaking. He was however doing well when he married Sarah Ann Miller, daughter of Branch K. Miller and his wife, née Kirk. Mrs. Miller was of Huguenot extrac-

tion, of "an austere family," as her granddaughter tells us. She came from Georgia as a bride and was duly shocked by "the sinfulness of New Orleans," so startlingly in contrast with the "earthly paradise" and "haven of piety and civilization," which according to her recollection she had left. From her Grace King inherited a strain of stalwart Protestantism which made her a staunch partisan of that great Presbyterian divine, Dr. Benjamin Morgan Palmer, in the midst of a community predominantly Catholic.

Sarah Ann Miller, Grace's mother, was born in Royal street, in the very heart of the most intensely French part of New Orleans. She grew up speaking the beautiful language of France and saturated with French literature, and when she had children of her own, she instilled into them her own passionate love for that language and that literature. In fact, in her girlhood the future Mrs. King knew practically none but French speaking people. The exceptions were that grand old jurist, Alfred Hennen, who after the death of her father in 1833 became her guardian, and his daughter the beautiful Mrs. Needler Jennings. The friendship with the Hennens is interesting because it was a legacy inherited by Grace King who carried the intimacy into its third generation when in Caroline Louise Jennings (Mrs. W. H. Hodding), and Alice Jennings (Mrs. Hamilton Smith), she found some of the few friends and companions of her own age that she had in her youth.

Before her marriage to Mr. King, Miss Miller found herself in straitened circumstances, and taught in a Huguenot school in Rampart street, near Conti. Tradition has it that she was a very good instructress with a French accent which even the most caustic critic—there were many in those times as well as now—dared not impugn. Mrs. King was always a dainty little person with great masses of hair which during the troublous days of the Civil War turned snow white. She had amazing gifts as a raconteuse, was a notable hostess, and possessed all the complicated household lore which made the Creole women of the olden time the most marvellous housekeepers in the world. She lived till 1903. Even in advanced age she retained her memory unimpaired—an inexhaustable storehouse of anecdotes of the remarkable persons she had known and the extraordinary vicissitudes through which she had passed.

William King died in 1881. In his prime he was considered an authority upon that abstruse subject, the "batture" lands, source of perennial litigation in New Orleans. Although he was devoid of literary pretensions, his briefs reveal a considerable talent in that direction which, had it been concentrated upon less technical themes, might have won its possessor widespread recognition as a writer. In middle life Mr. King developed bronchial trouble. He was sent to France where according to New Orleans' Francophile medical practitioners, all diseases were sure of swift and entire cure—and when the benignant Gallic climate had wrought its anticipated miracle he came back to New Orleans and resumed his professional occupations. But he never really recovered. A racking cough pursued him thereafter. When the Civil War broke out he was not physically able to take his place in the ranks of the Confederacy. However, he did his duty in another way. He found a substitute in a young man named Couvillier whom he equipped and sent to the front at his own expense. Till his death William King remained obstinately "unreconstructed," perhaps all the more so because his impaired health had prevented him from relieving in more active ways the burning sense of patriotism in his heart. It was a sentiment highly creditable to him as a man. But it caused a good deal of trouble for his family.

Grace King was the third child and oldest girl in a group of eight children. Two brothers preceded her in the family circle; Fred, who subsequently became judge of one of the district courts and was a very distinguished man in other ways; and Branch, who was prominent in the cotton business and amassed a respectable fortune. After Grace came the fourth child, May, who married Brevard McDowell, of Brevard, North Carolina, then Annie Ragan, William, Edmonia, and Nina Ansley. William was a well-known journalist in New Orleans, but died in early middle life. Edmonia did not live to maturity.

Nan and Nina were separated from the senior sister by something more serious than the gap of years, considerable though that was. For in those days in New Orleans the young lady of the family was aureoled by a prestige which kept the younger members aloof, in a perpetual state of half-panicky respect and adoration. They were on the outside of the orbit in which the older girl moved on her appointed way. In their early days Nan and Nina were never allowed to accompany Grace on those stately visits which constituted much the greater part of social life in the South; not

until the common distresses of Reconstruction times, the loss of wealth, and the daily toil of a large household brought them together in an affectionate equality which, however, down even to Miss Grace's last hour did not altogether preclude the deference traditionally due from juniors to senior.

Grace King was eight years old when the Civil War began, and ten when New Orleans was captured by the forces under Farragut and Butler. Both events impressed her in the remote, episodical way in which tremendous historical tragedies affect the very young. From the upper casements of her home she saw the clouds of smoke from burning cotton and sugar on the levees, destroyed to prevent them from falling into the hands of the enemy. She was awed and mystified by the comings and goings of her elders, their conferences and preparations in the face of the general disaster. But the struggle did not touch her life very intimately until she and the other children were hastily bundled aboard a river steamboat by a terrified mother and a still more terrified grandmother, to be taken to L'Embarrasse and to Heaven only knew what terrible adventures in the desolate country-side.

Miss King has given a thrilling account of this incident in her "Memories," and it will not be necessary to recount it here in detail; suffice it to say that her father declined to take the oath of fidelity to the Union exacted by Butler, came under suspicion, and had to flee the city in order to save himself from the penalties inflicted right and left by the Federal commander. That result was not unexpected. In fact, King had instructed his wife what to do in the event that some night she might wait in vain for him to return home. She would know that the anticipated emergency had arisen. She was to obtain, if possible, permission to leave New Orleans for L'Embarrasse, and there he would try to join her.

Miss King relates that Butler peremptorily denied Mrs. King's request for a passport. But it appears there are as many ways of outwitting a military satrap as there of choking a cat, and the good lady's resources were adequate to the occasion. There was a white woman who had been once a sort of protege of the Kings; she had opened a boarding-house for Federal officers, and had among her patrons some of high rank. She was loyal to her former patrons and now in the hour of need, volunteered to procure the necessary papers. Her efforts were so efficacious that within a

few hours after Butler with his accustomed brutality had refused, another officer had consented, and Mrs. King found herself officially entitled to depart whenever and howsoever she pleased.

Before she could do so, however, it was necessary to arrange some business matters with her husband's friend and client, Nelson McStea, a well known and very wealthy New Orleans merchant. He insisted upon providing her with the articles of food and clothing likely to be needed at L'Embarrasse. When Mrs. King protested against accepting so overwhelming a donation, McStea dismissed her with the announcement that the goods, packed in barrels, were already being put aboard the steamboat, and that she must acquiesce without further demur. Later, when after an eventful trip by river to the Teche country, the consignment was inspected, the barrels proved to contain—quinine, anaesthetics, bandages, and other medical and surgical supplies for the Confederate army! Unwittingly Mrs. King had been made the agent through whom these articles had been smuggled out of the city. We may be sure it was done, too, without her will, for she was too conscientious and truthful a person to agree to the conditions under which the passport had been issued to her, and then deliberately transgress its provisions. Perhaps Butler had his reasons for imposing harsh regulations upon the contumelious population of New Orleans! The supplies, however, were eventually delivered by the Kings to Confederate army officers and by them transmitted to the hospitals in Northwestern Louisiana where they were more welcome than an equivalent weight in precious stones.

Mr. King joined the family at L'Embarrasse. There they all remained for two years. As soon as it was safe for them to return to New Orleans, they did so. It was imperative that the husband and father should re-establish himself as the bread-winner; but that proved far from easy. His persistent refusal to subscribe to the oath of allegiance to the United States was perhaps Quixotic, inasmuch as the war was over now and there was little point in declining to assume the old forms of nationality; but William King did not see it that way, and paid the penalty in the poverty and distress of his loved ones. For years the Federal courts were barred to obdurate persons like himself. Those tribunals were the only places open to litigants. Such legal business as a contumacious barrister might pick up, had to be handled outside of them. The opportunities from graft were infinite, and industriously were they exploited by those members of the local bar who

stood in with the judges—both dishonorable groups mainly composed of strangers who flocked into Louisiana precisely for the purpose of profiting by the situation.

Under these circumstances the Kings had to find refuge in the cheapest quarter of the city. They located in a tiny, six-room "cottage," in the far, southern extremity of New Orleans, in the Parish of St. Bernard, opposite the Jackson Barracks, where a detachment of Federal troops kept an eye on their movements. The life there during four trying years has been described with loving detail in Grace King's most remarkable novel, "The Pleasant Ways of St. Medard." This fine story is pure autobiography; the names a little disguised, but the incidents photographically reproduced from the experiences of that time.

Grace's education had already begun. She had been taught at L'Embarrasse by her mother and grandmother. But now in St. Bernard she was sent to the little neighboring school to which she refers so picturesquely in "The Pleasant Ways." She and her brothers and sisters prepared their lessons every night around the dining room table by the light of an oil lamp, and under the direction of their father. When financial conditions improved, as they did when the military control in Louisiana was relaxed, and the family was able to move to more comfortable quarters near the center of the city, she was matriculated at the Institut St. Louis. The new home was on Erato, near St. Charles avenue. The Institut St. Louis was miles away on Burgundy street, near Esplanade. The young girl had to make the journey from home to school on the slow-going mule-drawn street cars which were the only conveyances in the city in those days. But apparently the toilsome daily travel back and forth was worthwhile. At the head of that then famous establishment was Mme. Lavillebeurve, whom her affectionate pupil has immortalized as "Madame la Reveillière," in "Monsieur Motte." We know little of Grace's studies, however, except that she was instructed in French by the courtly, erudite Professor Rouen, and that she won a prize for excellence in that language in competition with pupils of authentic French descent. At sixteen she was graduated in the beruffled organdie dress and numerous ribbons, the white kid gloves and the bouquet of lilies customary in New Orleans on all such occasions.

Her next school was presided over by Mme. Cenas, a truly remarkable woman, whose memory is still venerated by the older

generation in New Orleans. Impoverished by the war and with daughters of her own to educate, Mme. Cenas set up a school in her own home in Rampart street, near Esplanade, and met with such success that, for a generation it was accounted something of a social triumph to be admitted within her portals. One of the daughters, Heloise, was Grace King's preceptress in English. Heloise Cenas had been specially trained in Boston to be an instructress in her mother's school. From her the future novelist learned to know and love the English poets—Wordsworth, Shelly, Keats, and the great prose-masters—Ruskin, Carlyle, Landor, Pater. Keats was Miss Cenas' "saint." She made her eager pupil learn by heart the whole of "The Eve of Saint Agnes." Heloise Cenas not only loved literature—she respected it; and the "compositions" written at her behest were criticized and corrected and rewritten, five, six, a dozen times, until they were as nearly perfect as their youthful authors could make them. Was it a severe regimen? Perhaps, but Grace King never thought so. It was to this earnest, prolonged, exacting training that she owed her mastery of English style.

After a year or two at Erato street, the Kings transferred their household goods to a residence on Terpsichore, and then about 1883 to a stately mansion on Rampart street, now designated by the municipal number 140. This building still stands. It has suffered sorrowful alterations, and most of its distinctive features have been obliterated in the process of adapting it to commercial uses, but one may still discern on the top floor, just under the eaves, the small square window which lighted Grace King's study, where eventually she did much important literary work. The vicinity which is now a rather dubious one, was in those days distinctly aristocratic. Next door, at number 134 lived John A. Morris, the millionaire proprietor of famous race-tracks and promoter of the Louisiana lottery; and across the wide thoroughfare, at number 135, was the home of United States Senator Randall Gibson, a celebrated soldier in the Civil War and one-time president of the board of administrators of Tulane University. There too in a red brick house adjoining the Gibson mansion resided Dr. Stanford Chaillé, dean of the Tulane Medical School, and at the corner of Common (now Tulane Avenue) was a huge white marble mansion occupied by a Creole family with the un-Creole name of Koch.

By this time the restrictions imposed upon the practice of law had been lifted, insofar as they affected the elder King. Although he never took the oath of allegiance he managed to get a foothold in his profession and built up a large and lucrative practice. Mrs. King was able once more to dispense a charming hospitality. Around her dinner table met at frequent intervals all that survived of the gracious society of before-the-war New Orleans, and with it mingled in gradually increasing numbers the new people who were drifting into the city, allured by its rapidly growing commerce and the consequent opportunities to make a fortune.

In 1884 New Orleans determined to make the world recognize its returning commercial importance by holding a great international exposition. The excuse was the centennial of the invention of the cotton gin, or something of the sort; at any rate, cotton was the motive which inspired the immense undertaking. Its success was greater than its promoters anticipated even in their most sanguine moments. It was a triumph in every way but the financial; in that, it was one of the flattest failures known to history. It brought a host of notables to the city. Among them was Julia Ward Howe, author of the "Battle Hymn of the Republic," and her beautiful daughter, Maud. Mrs. Howe was at the head of the woman's department of the Exposition. John A. Morris placed his palatial Rampart street mansion at her disposal. His own family was to be absent in Europe that year. His hospitable offer was accepted. The result was curious. The Howes were far from rich. There were some startling contrasts in the life in the magnificent mansion, but Mrs. Howe put on a brave front and many delightful social gatherings were held there under her auspices.

Mrs. King, in deference to the fine old New Orleans tradition which makes it the duty of the residents in the neighborhood to call upon a newcomer, went over to the Morris mansion to pay her respects to its new tenant. Mrs. Howe was but a name to Mrs. King. That the object of her courtesies was perahps the most dyed-in-the-wool of abolitionists and Union sympathizers was wholly unknown to the dear lady who never forgot that she had been a citizen of the Confederacy and had suffered in the cause of the South. She invited mother and daughter to be her guests at a reception. A distinguished company gathered to greet the Northern visitors. In the midst of the festivities one well-informed but not-very-tactful grand dame asked Mrs. Howe to recite her famous poem. Mrs. Howe did so. With slowly deepening horror

Mrs. King heard the incendiary rhymes echoing through her innocent drawing-room. So that was *the* Howe—the Yankee —the impossible, unspeakable Howe! She slipped out of the brightly illuminated apartment and found a seat upon her own front-door step. There she remained until the offensive guest departed. Never would it be said that she and the author of the "Battle Hymn of the Republic" had wittingly been together under the same roof. That was characteristic of New Orleans in those days, and it was just as characteristic that not long after, all was forgotten and forgiven, and Mrs. Howe and Mrs King became good friends, even intimates.

One other anecdote must be inserted at this point, inasmuch as it illustrates both Mrs. King's boundless hospitality and the attitude which the New Orleans negroes took towards their putative liberators. One evening Mrs. Howe was Mrs. King's guest at dinner. During the soup course something was said which revealed the guest's peculiar status to the dusky attendant waiting to remove the soup-plates. The plates were removed. Mrs. King rang for the next course. It did not come. A long pause ensued. Mrs. King rang again and nothing happened. The situation threatened to become embarrassing. Finally, the hostess excused herself and went to the kitchen to ascertain what had occurred. She anticipated one of those culinary disasters which sometimes mar even the best devised banquets, but she was not prepared to find all her servitors congregated in a single excited group, discussing in angry, high-pitched negro voices "dat 'ooman." To Mrs. King's amazement they refused to serve Mrs. Howe, on the ground that she "ain't nothin' but a mis'ble Yankee. . . . No, Ma'me, an' she ain't quality." Nor was it until the perturbed hostess reminded them that a duty to a guest took precedence over all other considerations that they consented to resume their tasks. The delayed repast was carried through to a triumphant close. Mrs. Howe, needless to say, never learned how near her presence came to precipitating a crisis in the King household.

The acquaintance with the Howes was a turning-point in Grace King's life—one of a series of apparently predestined episodes which culminated in launching her upon the career in which she was to score so brilliant a success. It seems that a literary society called the Pan-Gnostics had been formed in New Orleans some years before. Among its members were John R. Ficklen, the historian; Bessie Bisland (Mrs. Wetmore), the friend and biographer

of Lafcadio Hearn; and Brown Ayres, professor of physics at Tulane University and later president of the University of Tennessee. But this organization was moribund. Mrs. Howe undertook to revive it. A meeting took place in her home. The Pan-Gnostics rejuvenated and for a year or two flourished again. Among those who now identified themselves with the society were Joaquin Miller, the poet, who was temporarily residing in New Orleans; Henry Austin, the Boston poet and journalist; Douglas Sherley, Wendall Stanton Howard, and others of equal note.

It was for the Pan-Gnostics that Grace King evolved her first piece of literature. It was an essay on "The Heroines of Fiction." She tells us in her "Memories" that she read it with a quaking heart and was astonished to find it received with much applause. Austin took it to send North to the newspaper he was then representing, and in its columns it duly appeared. Subsequently it was copied with approving comment by an English periodical. This success made the author aware of her latent talent. That was much, but one other incitement was necessary before she understood clearly what was to be the major interest of her life.

However, before we describe just how this final impulse was communicated, we must add one further preliminary detail. This was Grace King's friendship with Charles Dudley Warner. Warner was a member of the editorial staff of Harper's Magazine, in the epoch when it meant something to occupy that position. Harper's was one of the triumvirate of great periodicals which then dominated American letters in a manner for which we cannot at the present day find any equivalent. Warner was sent to New Orleans to write some articles about the city and did so with great success. With him Warner brought letters of introduction to the Kings from mutual friends in the North. He found lodging in "chambres garnis" on Rampart street, a few doors nearer Canal but on the same side of the street as the King mansion. At first an occasional visitor, he fell gradually into the habit of calling daily on his New Orleans hosts. Miss King, in her memoirs, has preserved many anecdotes of the merry scenes enacted around her mother's hospitable board when Warner was present at lunch or dinner. The connection proved invaluable to the incipient authoress. For Warner, on his return to New York, kept in touch with his Southern friends, and did yeoman's service in keeping Grace King's name before publishers and editors and thus smoothed for her a road usually exceedingly rocky to the literary neophite.

Among those attracted to New Orleans by the Exposition was Richard Watson Gilder, editor of the "Century" magazine. One night during the Carnival of 1885 he was a guest at the Pickwick Club. This was one of the leading social organizations in the city. It was deemed a great honor to be invited to witness the Carnival parades from its balconies. Grace King and one of her brothers were also present. At the close of the evening Gilder asked to be permitted to escort Miss King to her home a few squares away. The conversation which had been difficult all evening became more so when the topic of George W. Cable and Cable's stories were introduced. Cable was just then at the inception of his distinguished career, but in New Orleans his name was anathema. The Creoles were convinced that his description of them was maliciously defamatory. The Kings, by virtue of their long identification with the "ancient population" (as it liked to call itself), had acquired most of its prejudices and some of its peculiarities, and shared in its aversion to the gifted writer. Let us remark, in passing, that here too as in the case of Mrs. Howe, the initial dislike eventually gave way to a very different sentiment. A few years later, when Grace King's outlook had been broadened by travel and intercourse with the chief citizens in the republic of letters, she came to entertain a very high opinion of Cable's work and a very warm regard for him personally.

Gilder, who was publishing Cable's stories in the "Century," expressed his admiration of the fine artistry which characterized these compositions.

Grace King's blood boiled. She entered an impassioned protest.

"But why," demanded the New York editor, "do you Orleanians feel so bitter towards one who has really done much to make your city known and loved?"

"Because," she answered, "he has shown a preference for the negro over the white. Because he has assumed the inevitable superiority of the quadroon over the Creole. We feel that he has stabbed his native city in the back in a peculiarly dastardly way. His object is to curry favor with the Northern people and the Northern publishers."

Gilder's manner became chilling in the extreme.

"Why," he returned, "if Cable has betrayed you, do not some of you write the truth, and do it better than he does?"

Grace had no answer ready. Indeed, no answer was possible. The rest of the walk was accomplished in silence. As the visitor bade his companion farewell at her door, a sudden resolution flared up in the latter's heart. She at least, whether capable or not, would not disregard his challenge. She would make the attempt to overthrow the traitor in his own field. She was destined not to see Gilder again for years, but long after, when time had healed that breach, they laughed heartily over the whole incident. But it served an unexpected end. It was the other incentive which determined Grace King's choice of a profession.

The next morning she shut herself up in her bed-room and with flying pencil flung upon paper a story of Creole life as she had seen it in the Institut St. Louis. What she wrote was the story, "Monsieur Motte," printed a few months later in the Princeton Review. The name of Motte she adopted from that of a well-known member of the local bar; Mme. la Reveillière was, as we have already said, Mme. Lavillebeuvre, but otherwise the incidents in the story were wholly imaginary. As soon as the task was complete, she sent it to the editor of the "Century" anonymously and through a third party, as she tells us in the "Memories" and after a tragically brief interval, received it back with the customary curt, printed formula of rejection.

Our narrative now shifts back to Charles Dudley Warner. The very day that Grace King received the manuscript of her rejected story a letter from him arrived commenting upon her "Heroines of Fiction," and chiding her gently for not having availed herself of his services in placing her work. Could he be of use to her in that way in the future? So Grace sent him a full description of her encounter with Gilder and the writing of "Monsieur Motte." The result was that Warner asked her to send him the manuscript. He placed it on the desk of Mr. Alden, editor of Harper's. Hardly had he emerged from the Harper office when he met Professor Sloan, who was brimming over with enthusiasm about the magazine which was being revived under his direction at Princeton University but wanted a short story to complete the inaugural number. An idea struck Warner. Rushing back to Alden's desk and finding "Monsiuer Motte" still lying there untouched, he picked it up, ran back to Sloan and thrust it into his

hands with injunctions to see that it be inserted in the forthcoming "New Princeton Review." That was how "Monsieur Motte" found its way into print.

It will perhaps be asked at this point why Grace King had waited so long to experiment with letters. It is strange that a person of so definite a talent as hers should have previously felt none of the imperative urge to composition which is generally and correctly assumed to accompany the possession of genius. It must be remembered, however, that the environment in which the first thirty years of her life were lived was far from favorable to literary pursuits. True, she had received an excellent education. In addition to English and French, which she wrote and spoke with equal facility and elegance she was well-trained in Spanish and German. But she also had a talent for household work. She was really a very competent dressmaker. It fell to her to contrive those ravishing toilettes of muslin and lace, ribbons and ruffles which she herself and her sisters, like all other New Orleans girls of their age and station wore on public occasions. Alas, there were many such costumes to be created! They consumed time and thought. In the routine thus established there was no opportunity for writing. It needed something as cataclysmic as a World Exposition to jar her out of these housekeeping preoccupations and make her see how vast the world was that lived and strove and thundered beyond the threshold of her home.

It must be emphasized over and over again that Grace King was singularly advantaged by the fact of the New Orleans Exposition. But for the people drawn to the Crescent City by that enterprise, and the friendships and inspirations thereby awakened in Miss King's life, we may be quite sure that her name would never have emerged from obscurity. The Exposition was intended to force New Orleans upon the national notice. A world public was suddenly made conscious of the unique charm of the Louisiana city. There was a demand for literature about it, its history, and the peculiar civilization represented by it. Miss King happened to be the person best fitted to act as its interpreter. Thus she was suddenly, almost involuntarily projected into the national literary arena.

She was not the only one who benefited in a literary way from the Exposition. George W. Cable owed his emergence into nation-wide renown to the same exceptional combination of circumstances. Lafcadio Hearn was similarly fortunate. His fantastic genius

would probably have sputtered out in the monotony of New Orleans journalism had it not been for the opportunities which the Exposition opened before him. But these two men abandoned the city, one to go North, the other to find in the West Indies and in the Orient congenial employment for his pen. Grace King remained in the city of her birth. Ever since the Exposition New Orleans has retained the reputation for romance which skilful advertising then created for it. It is still the country's one perennially picturesque community, but that has become an old story. Not for half a century now has the breath of Creole romance filled the sails of a truly first-rate literary talent. Miss King's was one of the first successes of its kind and it will probably be the last.

I have ventured to discuss the first half of Grace King's life in considerable detail because it is not only interesting in itself but typical of a social order which is now entirely extinct. The remaining forty years of her career, filled with notable literary undertakings and crowded with important friendships need not be rehearsed here at anything like corresponding length. For one thing, Miss King herself has set it down elaborately in one of the most entertaining and valuable books that has ever come from the pen of a Louisiana writer. Those who are curious to know how her talent when once aroused continued to unfold, and how her widening fame brought her the admiration of scores of distinguished personages not in the United States alone, but also in Europe, will find in that volume an ample and delightful record. Here, however, we need but trace the story in its broadest outline.

After the appearance in the "New Princeton Review" of "Monsieur Motte" and its three companion stories, orders for similar work poured in upon the authoress. Publishers competed for her writings. The foremost American magazines featured her stories. Charles Dudley Warner saw that this was done. Richard Watson Gilder, handsomely admitting that Creole life had found another and no less artistic an interpreter than Cable, opened the pages of the "Century" to her. A friendship with Hamilton Wright Mabie resulting from an enthusiastically admiring letter evoked by the publication of his essay on Browning was also very helpful. Mabie, upon hearing that Dodd, Mead & Company proposed to issue a series of volumes on the "Makers of America," persuaded them to allocate the one on Louisiana to Grace King. The result was her first elaborate piece of historical composition, "Bienville." Other similar enterprises, initiated by rival firms, solicited her

participation. A volume on Iberville succeeded the one on Bienville. A history of Louisiana prepared in collaboration with Professor John R. Ficklen, a collection of "Stories from Louisiana History," and a multitude of magazine articles all testified to an interest in historical themes which deepened with the years.

As a historian Grace King possessed unusual qualifications. She had the language equipment essential for the performance of her task—an equipment desirable in every historical student but indispensable to one working in Louisiana history. She had also the inexhaustible patience necessary in the examination of the almost forgotten and widely dispersed records of state and city. Ultimately these researches flowered in what is unquestionably Grace King's outstanding volume in this special field—"New Orleans: The Place and the People." This book was published by Macmillan in 1898 and has been twice reprinted, the last time in 1912. It is an account of the city historically and socially, not the dry, formal chronicle of a people and a place, but the story filtered through an imagination and a personality. It is New Orleans pictured as Grace King saw it. The pages are full of color, tenderness, sympathy, and understanding. She was most interested in the colonial period. It must be confessed that it was in dealing with the French and Spanish builders of the city that her presentation is most alluring. But little as she felt atracted by the American regime, she had too much of the artist's conscience and too keen an eye for drama to ignore the thrilling episodes which stud the latter epoch also. For example, who that has ever read her chapter on the cholera epidemic of 1833 will forget the poignant city of her picture of the stricken town, where the victims perished at the rate of one a minute through the long, hot, tragic summer days?

Another field in which Miss King's endowments fitted her specially to shine was that of literary biography and criticism. Her work there was large and important. She was one of the first writers to draw the attention of the American public to the merits of contemporary French letters. Through Warner's friendship she was invited to contribute a series of articles on this subject to his vast "Library of the World's Best Literature." None of these essays have been reprinted, although if grouped with the papers on similar subjects published in Harper's Magazine—also at Warner's suggestion—they would compose a massive and by no means uninteresting volume.

It is, however, as a writer of fiction that Grace King's reputation must stand or fall. She was unquestionably a master of the short-story. In that exacting department of letters she occupies a niche from which it is unlikely that she will ever be dislodged. In recent years, however, her achievement has been to some extent obscured. A new generation has arrived, with different tastes and ideals and a new literature has appeared to meet its demand. In that situation Grace King's delicate Southern art seems to have no place. This is however but a passing phase. Those who are aware of the genuine merit of Grace King's work feel confident that her place is secure among that group of writers which includes Joel Chandler Harris, Thomas Nelson Page, George W. Cable, Ruth McEnery Stuart and all that numerous and gallant company which between 1880 and 1900 etched an enduring portrait of the civilization of the pre-Civil-War South.

Grace King's outstanding contributions to this literature were her "Tales of a Time and Place," published by Harper's in 1892, and her "Balcony Stories," which were issued from the Century Press a year later. The five tales in the former collection were originally printed in "Harper's Magazine" in 1887. The fourteen stories in the latter book were first read in the "Century Magazine" in 1893. There exist, moreover, upwards of a score of other stories little if anything inferior in charm and sight, which have never been reprinted from the magazines and newspapers where they originally appeared. These would be sufficient in bulk to make up three or four additional volumes. Someday it is hoped a pious hand will recover these new widely dispersed materials and put them together in a permanent form.

Miss King herself has borne witness to the important part taken by her mother in the construction of these stories, particularly of the little masterpieces in "Balcony Stories." Mrs. King knew the Creoles thoroughly. She had an inimitable faculty in relating what she knew. Charles Dudley Warner, Hamilton Wright Mabie and a dozen other accomplished judges have testified to her ability in this regard. Unfortunately, Mrs. King had no skill in putting her knowledge on paper. That remained for her gifted daughter. In the process of embodying them in literary form Grace King managed to retain the intimate character of the original narration. She gives us as no one else has been able to do, the poignancy, the tragedy, the tenderness, the passion, the simplicity, and the childlikeness of the Creole temperament no less

than its quaint, un-American quirks and twists of speech, its eccentricities of manner and ideal, its unconscious humor, its deep, underlying poetry.

Miss King was not so happy in the novel. She made several attempts at the long story but with rather dubious success except perhaps in the case of the "Pleasant Ways of St. Medard." This book was written in 1907 but did not find its way into type till 1916, and then only as a result of a curious trick of fate. The manuscript made the usual round of the publishers and met with the usual treatment of first novels—polite refusal. It deals with a theme which even at that late date was not altogether safe. It depicts the sufferings and triumphs of a well-born Southern family impoverished by the Civil War, and its struggle with adverse circumstances not altogether unprovoked by the harshness of Northern soldiery and the ignorance of Northern politicians. In 1907 a plain, unvarnished tale on this subject was scarcely a good commercial proposition. After all, the greater part of the reading public was in the North and was largely composed of people not likely to relish the implications latent in Miss King's fine story. It can therefore easily be understood why Northern publishing houses shied away from "The Pleasant Ways of St. Medard."

In the course of its wanderings the manuscript fell into the hands of Warrington Dawson, and he, waxing enthusiastic over what he rightly deemed a work of exceptional merit, sent it to England to Edward Garnett, the celebrated author and critic. In the midst of countless other occupations Garnett found time to act as a publisher's advisor. He, too, liked "The Pleasant Ways of St. Medard," but realized that its appeal was not to the British audience and returned it to America with the confident expectation that it would be snapped up by the discriminating publishing houses which he much too optimistically believed to exist over here. Some years later, writing in the "Atlantic Monthly," and assuming that the book had been printed, he took occasion to praise it as "a story rare in its historical significance . . . a woman's lingering memories of the charm and grace of the New Orleans atmosphere," and asked in conclusion, "Will not its exquisite shades of feeling, delicate in vibrating sadness, give the novel a permanent place in American classics?"

The publication of so flattering a tribute from so eminent a pen naturally awakened curiosity in every literary center in the

United States. When it was ascertained that no such book had been printed, the great publishing houses got into touch with the authoress, begging—nay, demanding—the chance to put it in type. Miss King made a selection among them judicially. Henry Holt & Company was entrusted with the task, but they insisted that it should be rewritten to bring in a love interest. The original story lacked that supposedly essential ingredient of the great American novel. Miss King spent a year laboriously revamping the book to fit the new requirement. Then realizing that romance had no portion in the tale, she consigned the result to the waste-paper basket. Perhaps she was wrong; perhaps the publishers for once were right; at any rate when the story at last made its debut, it failed to hit the public fancy. Only a few copies were sold. Miss King's income from it was less than $25. The public indifference was so marked that the publishers, abandoning any idea of a second edition, donated the plates outright to the authoresss. They were, however, used again in 1927 when Macmillan tempted fate by re-issuing the book. This time the critics were very favorable in their comments but the day had passed when a story of its type could take its place among the best-sellers. Nevertheless, "The Pleasant Ways of St. Medard" is a distinguished book which in the future will be re-discovered from time to time, and whenever so re-discovered, read with pleasure and profit. As a miniature panorama of what transpired in Louisiana in the terrible days of Reconstruction during the death-throes of the pre-war South, it is not to be excelled.

In 1924 Macmillan brought out another novel by Grace King, "La Dame de Ste. Hermine." The heroine of this historical romance was one of the early settlers of Louisiana, one of those "filles-á-la-cassette" who figure so picturesquely both in the fact and fiction of the last two centuries. It seems that the Lady of St. Hermine was not very happy in her native France and came to Mobile first and then to New Orleans in quest of better things. The book is sympathetically and learnedly written, but it by no means equals its predecessor in charm. Its financial success was not startling.

Perhaps we ought to refer in this connection also to Miss King's "Old Creole Families in New Orleans," made up of genealogical sketches of the historically important families of the Southern metropolis. As originally projected, the book was inordinately long. The publishers cut the text ruthlessly towards its close, not

without damage to its literary quality. All that got into print, however, is of the deepest historical interest, particularly the elaborate account of the Pontalba family, once very distinguished in the social life of the city. In spite of its strong local appeal the volume had practically no sale in New Orleans. Naturally there was even less demand for it elsewhere.

Finally, a word must be said about the "Memories of a Southern Woman of Letters," Miss King's posthumous work, to which reference has so frequently been made in the foregoing pages. The book was undertaken in deference to a suggestion from Mr. Latham of the Macmillan Company. It occupied Miss King intermittently during the last ten or twelve years of her life. The author let her pen have its own way and it tended to go into details of family history even more voluminously than the nature of the work justified. These passages had to be revised, rewritten, and in not a few cases entirely eliminated. Hence the progress of the book was slow. The manuscript, however, was complete when the author was stricken down by her last illness. All that remained was to prepare it for the printers. This was done after Grace's death by her devoted sister, Nan, with the assistance of an agent of the publisher, sent down from New York for that purpose. In his judgment the book was still too long and too intimate, and as a result, much matter which had passed the author's own exacting tests was finally deleted. The "Memories" in their published form are therefore not precisely the book that its painstaking writer intended it to be.

It is nevertheless a delightful volume. When it appeared some months after Miss King's death, the reviewers pronounced it, on the whole, one of the most attractive and significant works of its kind written in this country in many a long year. It is not strictly a memoir but is just what its title intimates—a sheaf of memories. It is the record of experiences and particularly of friendships selected by an unusually active, vigorous, retentive mind, out of a long, laborious, extraordinarily varied and picturesque life. That its sale should not have exceeded a few hundred copies may be set down as one of the minor literary disasters of the present epoch, when the circulation of serious publications seems almost to have ceased.

It must be confessed that Miss King's books were on the whole unremunerative. The names which she bestowed on them had perhaps something to do with that. She preferred long, cumber-

some, somewhat enigmatic titles, distinctly Victorian in flavor. It is not astonishing that the reading public recoiled from "The Pleasant Ways of St. Medard" or "La Dame de Ste. Hermine," or "De Soto and His Men in the Land of Florida." At the outset of her career, when she had the advice of Warner and Mabie, she did not make such mistakes. "Monsieur Motte" and "Balcony Stores" certainly have a more inviting sound than the titles affected by her as she grew older.

The best compensated book written by Grace King was the one compiled by her for the Mount Vernon Ladies' Association in 1929. This simply and appropriately entitled "Mount Vernon on the Potomac," was a majestic tome of nearly five hundred pages. It supplies an agreeable account of the father of his country, his home and of the work of the patriotic women who have saved that priceless landmark to posterity. The book was both a labor of love and a task commissioned and paid for by the association. It brought the author a fee of $2,000. It was, however, addressed to a very limited public.

The long busy years consecrated to the execution of these multifarious literary enterprises were interrupted by three journeys to Europe. Of these the first and most important took place in 1891. In that year New Orleans was torn by contention over the Louisiana Lottery. The lottery company was applying to the state legislature for an extension of its franchise. Powerful interests both favored and opposed this ill-famed business. Women no less than men were involved in the bitter animosities of that stressful period. Grace King, always keenly interested in public affairs, felt compelled to share in the campaign against what she regarded with proper Protestant vehemence as an immense public iniquity. She was advised, however, to do no such thing but to seek rest and inspiration in other lands until the political tempest had blown over. New Orleans at that moment was clearly no place for a sensitive literary artisan. Miss King came to recognize that her mission was not political. Somewhat reluctantly she determined to follow the urging of her most trusted friends.

The journey resulted in the formation of numerous literary friendships. Grace was accompanied by her sister, Nan. They landed in England and went at once to Cambridge. In this old university town they met Miss Clough, sister of the poet, Arthur

Hugh Clough, and head-mistress of Newnham College. At her invitation Miss King gave a lecture at Newnham on Sidney Lanier, thus as she says, "introducing the Southern poet to England."

It was however, in France that the two ladies were most hospitably received. They brought letters of introduction from Mrs. James T. Field, widow of the famous Boston publisher, to Mme. Blanc, the "Th. Bentzon" of contemporary French letters. In her turn Mme. Blanc intrduced them to her son, Edouard, the famous traveller and lecturer; Edouard Grenier, the poet; Paul Desjardins, the Comtesse de St. Roman, daughter of John Slidell, and to Mme. Foulon de Vaulx, to dine with whom was a social distinction coveted by the most distinguished. At the table of this social celebrity the Misses King met Mme. Tascher de la Pagerie, grand-niece of the Empress Josephine, who had lived in the Tuilleries during the Second Empire.

At the same time the travelers were presented through Mme. Blanc to the famous Paster Wagner, whose book, "The Simple Life," when printed in English in America, made a sensation which has not yet been altogether forgotten. Wagner became a staunch friend of Grace King. She had already written something about him in the American press. His appreciation and gratitude led him to initiate a correspondence with this new friend which lasted over many years. When Wagner's "La Jeunesse" appeared in its American translation it was dedicated to Grace King.

The second visit to France was in 1906. With extensions to England and Italy Miss King managed to spend four delightful years abroad. This journey too was fruitful in delightful friendships. Among those who became Grace King's friends at this time may be mentioned Edouard Rod, Ferdinand Brunetière, Mme. Catulle Mendès, Mme. Alphonse Daudet, Judith Gauthier, and Mme. Dieulafoy, wife of a noted French archaeologist; Serge Fleury, son of the Comte Fleury so famous as the equerry of Napoleon III; and Mme. Fliche, the literary "double" of Mme. Blanc whose styles were so exactly alike that not even their closest associates could distinguish one from the other. Still others were the Comtesse de Noailles, the poetess; Henri Regnault, the painter who drew a portrait of Grace King which he autographed and presented to her; Sarah Bernhardt, and the Comte d'Aure, who had known George Sand and was once an equerry to Napoleon I. These were among the most distinguished but the travellers' contacts included

scores of lesser literary, artistic and political lights. In fact, Miss King entered whole-heartedly into the life of the French capital. Speaking the language perfectly and saturated with the French tradition, she was accepted everywhere. Her own brilliant personality confirmed and enlarged the first favorable impression. Miss King was by way of being a Parisienne of the most elegant and exclusive type.

In the spring of 1911 Miss King, having paid a flying visit to New Orleans, returned to Europe accompanied by her brother, Judge King. This journey was saddened by the death of Mme. Blanc who died in Paris virtually in Grace King's arms after a month's illness from pneumonia. In England, however, there were some pleasant moments. There, for instance, they renewed an old acquaintance with Ambassador and Mrs. Page, Mrs. Forbes Robertson, Mrs. Sidgwick, wife of the professor of Greek at Corpus Christi, and Dr. Sir William Osler. This journey was briefer and less important in its literary implications than either of its predecessors. Nevertheless, nothing can be more delightful than the way in which Miss King describes it in her "Memories." What she saw and did and whom she met in her European travels furnish some of the most fascinating chapters in this fascinating book. As one turns its pages and observes the interminable procession of celebrities that crossed her path, one realizes that the "Memories" is a book unique in American letters. Probably no woman that America has produced, ever knew intimately so vast a circle of the intellectually illustrious of her time.

But it would be a mistake to suppose that Grace King's intimacies were exclusively or even chiefly European. We have already mentioned some of the famous American men and women who entered her life. Others to whom we can allude only in passing were Edward King, the brilliant correspondent of "Scribner's Magazine;" William Milligan Sloane, the biographer of Napoleon; Wililam Gillette, the actor; Harriet Beecher Stowe, Professor Henry Marquand, Professor Loundsbury, Richard Malcolm Johnson, the Georgia author; William Dean Howells, Augustin Daly, Lizzie Adams, the artist-sister of Mrs. James T. Field; Richard Burton, the poet; Eugene Field, William W. Ellsworth, George Iles, the Canadian McLennon, Dr. Rudolph Matas, to whom Lafcadio Hearn dedicated "Chita;" Lafcadio Hearn himself; Thomas Nelson Page, and lesser lights by the score. Mark Twain she met in Hartford, Connecticut, on one of her many visits to Mr.

and Mrs. Charles Dudley Warner. Mark and his wife became her intimate friends. He had a villa near Florence, Italy, and there he entertained the King sisters on more than one occasion. The famous artist, Frederick Church, was another dear and valued friend. Even nearer and dearer was Henry M. Alden, the veteran editor of "Harper's Magazine," one of the ablest journalists that America has produced.

Nor should we omit from the roll of Grace King's intimates the name of Charles Gayarré. His name is less well-known today outside of Louisiana than it will be in time to come. He was the most accomplished of the early historians of the state, a man of extraordinary attainments in many fields, eminent as an orator and politician and a master of a distinguished literary style. As a historian Gayarré ranks with Prescott and Motley. The friendship between the Kings and Gayarré was a matter of long standing. It began with William King, Grace's father, by whom the historian was presented to the lady who became his second wife, the rich and beautiful Mrs. Buchanan to whom we have already alluded.

When Grace King was fifteen years old she and her sister May were entertained by Mr. and Mrs. Gayarré at their country home. This was the first time that the young girl had met the famous author. The event made a deep impression on her. Years later when Gayarré came back to New Orleans, old and poor and neglected, it was Grace King who visited and cheered him in his distress. She was with him when he died—she, her mother and her two younger sisters, ministering at that pitiable bedside, where a truly great man passed away, forgotten by the city which he had served so devotedly. It was to the King home that the bereaved wife was removed in the first paroxysm of her grief. There she remained for nine years, a beloved and honored guest. She accompanied the family when it removed in 1892 from the Rampart street mansion to a roomy, comfortable, frame residence at 2121 Baronne street. After Mrs. King's death, however, and the decision of the King sisters to go abroad, Mrs. Gayarré left New Orleans and made her home with a nephew in Canton, Mississippi. It was in Canton that she died. Her remains were brought to the city to be interred beside her distinguished husband in the old St. Louis cemetery where his ancestor, de Boré, also lies. It was from the King home that Mrs. Gayarré's body was borne to its last resting place.

The Gayarrés left no close relatives. The Gayarré family portraits became the property of the three sisters who had served the old historian and his wife so faithfully in their hours of direst need. I remember how in Grace King's drawing-room, the pictured faces looked down upon the company whenever we assembled there—Gayarré, himself, painted in Paris in the first flush of his glorious manhood; his father, the Spanish contador who came to New Orleans with O'Reilly; and his grandfather, de Boré, who was the first mayor of New Orleans. The last time I ever had the pleasure of conversing with Miss King was a Friday afternoon just two weeks prior to her own death. We spoke of these pictures. She led me from one to the other telling me their stories. Did I detect a certain wistfulness in her usually crisp tones? Or do I now, looking back and remembering how near she was to death herself, attribute to her a foreboding which she really did not feel? Who can say? And yet sometimes I cannot help but believe that as we talked of her old friends, her mind was busy with anticipations of a reunion which did not seem altogether undesirable.

Taken by and large, Grace King had a busy, interesting and satisfactory life. She used to rise at 5 A. M. All of her writing was done in the early hours of the day when she could work undisturbed. Thereafter she was accessible to her friends. Allusion has already been made to her Friday afternoon receptions. As her fame extended and celebrities drifted through the city, it became the custom for them to be presented on these occasions. One thus met in the King drawing-room a steady procession of distinguished strangers. After the death of Mollie Moore Davis in 1909, Grace King was left as the acknowledged dean of literary New Orleans. Towards the end of her life she also held a position of universally acknowledged pre-eminence in the social life of the city. One manifestation of this was her election as president of the Petit Salon, that unique half-literary, half-social organization which was formed around her by her admirers and over which she presided for a number of years, down to her death.

It was a delightful position to occupy, was it not? Yet it had its penalties. Even in New Orleans one cannot be a literary and social leader without incurring expenses. Had Grace King been dependent entirely upon the earnings of her pen, it is at least questionable if she could have afforded the charming hospitality which she and her sisters dispensed over so many years. Happily, there were other resources. When William King died, he left a

moderate fortune, the proceeds from which sufficed to maintain the home in comfort down practically to the end of his talented daughter's life. Moreover her bachelor brother, Branch, who made his home with the three sisters contributed liberally to the family purse. After his death, however, matters were for a time not so pleasant as they had previously been. Then came the disastrous days after the World War. There were two or three years just prior to her death when Grace King contemplated the future with considerable anxiety. An influential friend, appreciating her need, undertook to convince the city fathers that something was due from the municipality to one who had labored so arduously to build up the reputation of New Orleans. He asked for an appointment to some sinecure which would be less an employment than a pension honorably earned and gratefully bestowed. But he was refused. New Orleans admired but the authorities were not prepared to do anything to make safe and tranquil the last days of its most distinguished citizen. Fortunately, death intervened and straightened out Grace King's dilemma.

I would not have the reader imagine that these final days were embittered even by the growing burden of financial distress. There were many honors that came to Grace King, to offset her regrets and apprehensions. In 1913 she was made a member of the Royal Society of Arts and Sciences of Great Britain. Two years later the French Government honored her with the Academic Palms. In 1923 Tulane University conferred on her the degree of Doctor of Letters. The same year the Louisiana Historical Society at a splendid ceremony presented to her a silver loving cup in recognition of many years of service as its secretary. On that occasion the principal address was made by another distinguished New Orleans lady-of-letters, "Dorothy Dix," and some of the leading men of the city paid Miss King sincere and eloquent tribute. When on January 14, 1932, after an illness of barely two weeks, the end came, it was the sunset of a splendid career, the rounding-out and completion of a valiant and useful life amidst love, honor and applause.

Grace King died at 1749 Coliseum street in the house to which she and her sisters moved in 1903, immediately after the death of their mother. Previous to that date the family had spent six years in a beautiful old brick mansion at 2221 Prytania Street which they had purchased in 1897 from the Logan family. These successive dwelling-places still stand. That on Coliseum street rears its yellow

and white walls amidst a slowly dying neighborhood though once it was one of the most desirable, socially, in New Orleans. In the last quarter-century, however, the tide of fashion had ebbed away from Coliseum Place. The King mansion is still immaculate; it is still a place of pilgrimage to literary New Orleans; but it too, like its late mistress, is doomed to disappear. It has no part in the new order which is modernizing New Orleans. Grace King was the last of her type and perhaps it is a matter of poetic justice that her quondam residence, too, should be the last of its sort in the hostile environment that has robbed Coliseum Place of its former quiet beauty.

RECORDS OF THE SUPERIOR COUNCIL OF LOUISIANA
LXVII.

February-March, 1748.

(Continued from January, 1936, Quarterly)

By HELOISE H. CRUZAT
Marginal Notes by Henry P. Dart
(Revised by Walter Prichard)

By the Editor of the Quarterly

List of Officials of Louisiana participating in the work of the Superior Council of Louisiana contained in this installment:

De Vaudreuil, Pierre Rigaud Cavagnol, Governor

Le Normant, Sebastian Francois Ange, Commissioner of the Marine, First Judge and Intendant

Raguet, Jean Baptiste, Councillor, also acting Procureur General (in absence of Fleuriau)

Lafreniere, Nicolas Chauvin de, Councillor Assessor

Le Bretton, Louis Cesaire, Councillor Assessor

D'Auberville, Vincent, Second (later, First) Councillor

Kernion, Jean Francois Huchet de, Councillor Assessor (installed March 9th)

De la Lande d'Apremont, Charles, Councillor Assessor (installed March 9th)

Descloseaux, Jean Baptiste Claude Bobé, Councillor Commissioner

Fleuriau, Francois, Procureur General

De Noyan, Gilles Augustin Payen, Lieutenant of the King

Henry, Nicolas, Clerk of the Superior Council and Notary

Chantalou, Augustin, Sheriff

Lenormand, Marin, Deputy Sheriff

De Benac, Etienne, Town Major of New Orleans

Membrède, Chevalier de, Town Major of New Orleans (succeeding de Benac)

Prevost, Jean Baptiste, Agent of the Company of the Indies

Gueydan, Jean Baptiste, Chief Surgeon of the King's Hospitals

Vautier, Pierre, Surgeon

Pontalba, Jean Joseph Delfau de, Commandant at Pointe Coupée

Chanfret, Claude Trenaunay de, Subdelegate at Pointe Coupée

Potin, Bernard Louis, Notary at Pointe Coupée

Garic, Jean Baptiste, Attorney

Cantrelle, Jacques, an employee

February 1, 1748. Vol. 3. 31018. 4471. 1½ pp. Sale of a young negress.

Sale of a young negress named Babet, by Louis Bernard, of New Orleans, to Jean Baptiste Rivard, a wig-maker of the same city. Said negress came to Bernard by adjudication from the succession of deceased Trudeau, which Bernard sold to Rivard for the sum of 1750 livres, to be paid in piastres of five livres each, which said Rivard paid cash.

Signed: Chantalou; Rivarde; D'Anneville; Henry, notary. Document charred in upper portion.

February 1. Vol. 3. 31020. Declaration.

Declaration in Registry of the Council of the death of a negress aged about fifty years, from pneumonia following measles, by Sr. de Membrede.

February 1. Vol. 3. 31021. 4475. 1½ pp. Sale of a negro.

Sale of a negro named Paul, aged twenty or twenty-two years, by Remy Poisot, called Bourguignon, a settler at Natchitoches, to Pierre Garcon, called L'Eveillé, a journeyman, for the sum of 300 piastres of five livres each, which purchaser paid cash.

Signed: Poisot; pier Garsont; Chantalou; Lenormand; Henry, notary.

Document charred in upper portion.

February 2. 1½ pp. Notice of citation.

Notice of Citation served on Sr. Joseph Blanpain by Sheriff Lenormand to appear before Council on the following Saturday to testify, following decree of January 27, 1748, copy of which is reproduced. Given on petition of Nicolas Judice.

Document has ragged edges.

February 2. 2½ pp. Petition to cite.

Petition to Superior Council by Nicolas Judice for permit to cite Sr. Benoit for payment of the sum 637 livres on a note endorsed by him on March 9, 1746, and 250 pounds of tallow carried on said note. He sent these to Sr. Chantalou, who put such a high value on the merchandise that he could not sell them. The last news from there reported him as unconscious, wherefore petitioner prays to be allowed to seize in the hands of Sr. Chantalou the tallow and other things belonging to said Benoit, journeyman, to be sold in the usual manner, the returns to be paid to petitioner. Signed: Nicolas Judice; Garic, avt.

Permit to cite.

February 5, 1748. Permit to cite. Signed: Lenormant.

Notice of citation.

Notice of citation served on Sr. Augustin Chantalou, Greffier, at his domicile in New Orleans.

Upper right hand margin of document torn away.

February 3.

30 pp.

Defense of Chauvin Bros. vs. de Chavoy.

Memorial and defense argument presented to the Superior Council by Sr. Antoine Chauvin des Islets and Nicolas Chauvin Boisclair, brothers, having the same father, and Francois, Marguerite and Laurence Chauvin de Léry, brothers and sisters on their father's side, vs. the Chevalier de Chavoy, who married Joseph Chauvin de Léry's widow. Chevalier de Chavoy is cited to appear before the Superior Council at its next session. He did not wait to be condemned thereto, but rendered his account.

Permit to cite.

February 3, 1748. Permit to cite, signed by Lenormant.

Notice of citation.

February 3, 1748. Notice of citation served on Sr. De Chavoy at his domicile in New Orleans, by Sheriff Lenormand.

Document badly torn.

Answer of de Chavoy.

February 14, 1748. Answer of M. de Chavoy to debates of collateral heirs of deceased Joseph Chauvin de Léry, Jr. Signed: Chvr. de Chavoy; Marie faucon de Chavoy.

Acknowledgment of defense by Garic, avt.

Replies to defense.

February 25, 1748. Replies of Jean Baptiste Garic to the Chevalier de Chavoy.

Signed: Garic, avt.

De Chavoy's answer.

February 26, 1748. Refutations and replies to Jean Baptiste Garic by Chevalier de Chavoy.

These documents are in bad condition and very pale. The text in some parts is entirely effaced.

February 4.

31148. 1 p.

Petition for lease of a farm.

Petition by Francois Mahyeux to M. Trenaunay de Chanfret, Subdelegate at Pointe Coupée, informing the public that he has in charge the effects of the succession of deceased Pierre Mahyeux and the inventory made at the time of his decease.

Signed: Francois Mahyeux.

Petition granted.

Permit to proceed with lease of farm and cattle, conformably to what is required at Pointe Coupée. Signed: Trenaunay Chanfret.

February 5.

2½ pp.

Petition for recovery of a debt.

Petition to Superior Council by Nicolas Judice, settler of New Orleans, for recovery of 637 livres due him by Sr. Benoit on a note, and asking to be allowed to seize all property in the hands of Sr. Chantalou, belonging to said Benoit. Signed: Garic.

Permit granted.

February 5, 1748. Permit to seize, signed by Lenormant.

Notice of citation.

February 26, 1748. Notice of citation served on Nicolas Judice and also on Sr. Chantalou, Greffier, speaking to them personally. Signed: Lenormand.

Document in good condition.

February 7.

No. 1144. 5½ pp.

Adjudication of a house and half-lot.

Adjudication of a house and half a lot owned by succession of deceased Pierre Baril, by virtue of a decree of the seventh of last January.

Signed: Raguet.

Sale of above property.

February 14, 1748. On petition of Sr. Chalair, sale at auction in the Registry of the Council, of a house and half-lot, which were finally adjudicated to said Chalair (he signs "Chaler"), who promises to pay to Lenormand and his wife (widow Baril) 25 livres per year.

Signed: Chaler; Lenormand; Raguet.

Receipt for payment.

November 27, 1748. Receipt to Sr. Chalair, called Versailles, for the sum of 500 livres.

Signed: Lenormand.

Document in good condition.

February 7.

Vol. 3. 31063.

4478. 1½ pp.

Sale of a negro slave.

Sale of a Negro (pièce d'Inde) named Jasmin, by Jean Perret, settler at the "Oumas" (Houmas), to Remy Poisot called Bourguignon, resident at Natchitoches, for the sum of 1500 livres, in 300 piastres, 1200 livres of which were paid cash, the said Poisot obligating himself to pay the remaining sixty piastres next May, for security of which debt he hypothecates the said negro.

Signed: Poisot; Chantalou; D'Anneville; Henry, notary.

Document stained, lower margin ragged, and last page torn.

February 7.

3 pp.

Petition to recover deposit.

Petition to Superior Council by Michel Moulinier, who came to this colony on the ship La Mégère, bound for Mexico, to force him to remit 4698 livres paid to him and retained in his possession contrary to order of Sr. Berthous, following his letter of November 2, 1745. His wife affirms that she has no knowledge of this affair, and that the funds are not in her hands. Signed: Michel Moulinier.

Permit to cite.

February 27, 1748. Permit to cite, signed by Lenormant.

Notice of citation.

March 1, 1748. Notice of Citation served on Sr. Paul Rasteau, at his domicile at Mr. Broutin's, his father-in-law, speaking to the servant, by Sheriff Lenormand.

Second citation.

March 7, 1748. Second Notice of citation served on Sr. Paul Rasteau at the same domicile by Sheriff Lenormand.

February 8.

Vol. 477. 31065.

4479. 2¾ pp.

Sale of negroes.

Sale of Negroes sent to M. Gouvion, employed in the clerical force of the Marine (Bureau) Office, sent to him from Cap Francois, Santo Domingo. After having posted the sale and advertised it to the beat of the drum, they proceeded to the sale, where all bids were received on cash payment of the adjudication:

A negro named Procede, otherwise Jean Baptiste, who says that he is an indigo-maker, aged about thirty-five, went up to 1420 livres and was adjudicated to Mr. Daniel Hubert, called La Croix, to whom he was remitted.

Another negro (pièce d'Inde), named Valentin, aged thirty years, having no trade than to serve as a domestic, went up to 810 livres, which was not accepted, but set down for memoranda, 810 livres.

The said sale having brought but 2000 livres, on which 56 livres must be subtracted for costs, the sum of 2760 livres was remitted in cash to M. Gouvion. Passed on the above day, month and year.

Signed: Henry, Greffier.

Document stained, with five lines scratched out.

February 8.

Vol. 3. 31068.

4480. 4¼ pp.

Marriage contract.

Marriage Contract of Sr. Marin Le Normant (should be "Lenormand"), sheriff and crier in the Superior Council, son of Francois Le Normant and Marguerite Le Bramente, a native of Parish of St. Martin Le Blanc, archbishopric of Rouen, on the one side, and Marie Bret, widow of deceased Pierre Barry, when living a caldron-maker of New Orleans, on the other side.

Signed: Lenormand; Garic, avt.; Chaler; le Kintrek; Chantalou; Cantrelle; Henry, notary.

Statement of Lenormand's goods.

Statement of goods owned by Sieur Marin Le Normant (should be "Lenormand"), consisting of movables, immovables, household goods, which he places in the community between him and Marie Bret, whose goods have been seen and examined, amounting to 9035 livres; total, 9035 livres.

Signed: Garic; chaler; Chantalou; le Kintrek; Henry, notary.

February 8.

Vol. 3. 31075.

4481. 2 pp.

Deed of gift.

Deed of Gift, before Notary Royal in the presence of witnesses, by Charles Toutin, of age, son of Jean Toutin and Marguerite Lamotte, both deceased, co-heir for one fourth, with Jean, Charles and Marie Toutin, his brothers and sister. His sister is now the wife of Robert Pierre Lemercier, a harness-maker, and wishing to prove the friendship he bears her, he has made donation entrevifs, pure, simple and irrevocable, to her, in the best form that donation may be made of all that may come to him in the successions of his father and mother, ceding and abandoning to her from this moment his full share, obligating, renouncing, etc. Signed: Lenormand; Chantalou; Henry, notary.

February 9.

1½ pp.

Murder case against Baraca, negro slave of the King.

Petition for examination of corpse, and inquiry into murder.

Murder Case against Baraca, a negro slave of the King:

Petition to the Superior Council by J. B. Raguet, acting as Procureur General of the King, for examination of the corpse of a negress killed by one Baraca, her husband, and for inquiry into the murder. Signed: Raguet.

Permit for inquiry.

February 9, 1748. Permit for inquiry before Councillor de la Freniere, Commissioner on this case; corpse to be examined in the presence of Councillor D'Auberville, and report made of same. Signed: Lenormant.

No. 1145.

Proces verbal of examination of body.

February 9, 1748. Proces Verbal of examination of corpse of the wife of Baraca, by Surgeon Guedon ("Gueydon", surgeon in chief of the King's Hospital), in the presence of Councillor Vincent D'Auberville, Commissioner of the Marine, Second Councillor of the Superior Council, the chief Clerk of the Council, Mr. Raguet, acting Procureur General. She was killed at the King's plantation, on the other side of the river, and having arrived there they found one Millet, steward of said plantation, who brought them to the negro quarters ("le camp") where they saw the corpse wrapped in a blanket. She was named Taca, and was the wife of Baraca, slave of the King, who assassinated her with a billet of wood, according to report made by Flatague, Commander of the negroes, and by one Laoursa, also a negro slave of the King. Surgeon Guedon reported a wound in the form of a cross on the posterior part of the skull, accompanied by fracture of bones; he noticed that there was much blood in the brain, and perceived other wounds on her body, which he affirmed as true. He said that her death was caused by an instrument, such as a stick of wood, and ordered the said corpse to be buried.

Signed: Gueydon; Millet; D'Auberville; Raguet; Henry, Greffier.

No. 1146. 8 pp.

Inquiry against Baraca.

February 10, 1748. Inquiry made by Nicolas Chauvin de la Freniere, on petition of J. B. Raguet, acting Procureur General of the King, against Baraca, slave of the King:

Testimony of Millet.

First appeared René Antoine Millet, a native of Paris, Parish of Ste. Rose, aged forty-three years, Steward of the King's plantation, who testified that on the night of the eighth to the ninth of June, he was warned by Flatague, Commander of the negroes of said plantation, that Taca, wife of Baraca, had just been assassinated with a billet of wood. He arose immediately, and seeing that the negress still breathed he sent to the Hospital of the King for the Surgeon to bleed her, who came; but the negress having lost consciousness expired shortly afterwards, towards 6 o'clock A. M. Learning that her husband had given her the blow, he sought to have him seized, which he could not do, as said negro threw himself into the water (river), whereon he went to warn Mr. de la Chaise, Guardian of the King's store, of the case. Flatague and another negro named L'Ourseau showed him a firebrand as thick as his arm, with which the deed was done. He said that his testimony was the truth, and signed: Millet; la Freniere; Henry, Greffier.

Testimony of Flatague.

Antoine Flatague, a slave of the Bambara nation, owned by His Majesty, aged about thirty-five years, a Roman Catholic, Commander of the King's negroes, testified that on the night of the crime, between eight and nine o'clock, Baraca asked him for tobacco and invited him in to smoke a pipe, whereon he went into Baraca's cabin, who told him that his wife was always running to see a negro named Mamouroux, though he had forbidden her to see him. His wife came in at that instant and said to the Commander, "Baraca is always beating me because he is jealous", and turning to Baraca: "Why are you angry, since you saw nothing; why always scold and beat your wife without reason?" Baraca took a brand from the fire and struck her on the head, and she fell, whilst he tried to raise her, telling him, "You have done a fine thing", and Baraca ran out of the cabin. He ran after him, with Bary, Guelle, Mainmouroux and Léveillé. They ran towards the woods with a rope and irons to seize him, and coming towards the warehouse they perceived him hidden behind the store, and having approached to take him he ran towards the river, threw himself into it and got on a piece of wood drifting, calling to the Commander to come and take him, and upbraiding him. After this he went back to inform the steward of the plantation of what had happened. He said that his testimony was true, and declared that he did not know how to write nor sign.

Signed: Lafreniere; Henry, Greffier.

Testimony of Joseph Lourset.

Joseph Lourset ("Lourseau"), a Turc, aged forty-eight to fifty years, of the Roman Catholic religion, declared that he had received a citation to testify, which he produced. He testified that at sunset he had gone as usual to Baraca's cabin, where he found his wife shelling corn. Baraca came in on the moment and asked for food. On the instant she got up to give him some pap, whilst he feigned to eat with Baraca and she continued to shell corn. He then asked his wife for his pipe, who answered that she did not have it and knew not what he did with it. He then said: "Well, give me yours", and she told him to take it back of the barrel. He took it and continued insulting his wife. Deponent reproached him and then went off to bed; later he heard them quarreling, and having heard the Commander enter the cabin he returned just in time to see Baraca fell his wife with a blow on her head. He escaped them, and having taken ropes and irons he and the other negroes ran after him. He saw the said Baraca on a drifting log, calling the Commander names and daring him to come for him, that they would

die together. They then went to warn Millet, the overseer of the plantation, of what had happened. His testimony having been read to him, he maintained that it was the truth, and declared that he could not sign.

Signed: Lafreniere; Henry, Greffier.

Order to submit the foregoing testimony to the Procureur General of the King. (No signature).

No. 1148. 3 pp.

Decree of arrest against Baraca.

March 9, 1748. Session of the Superior Council of March 9, 1748, where were present MM. de Vaudreuil, Governor; Le Normant, First Councillor; de Noyan, Lieutenant of the King; Mr. de Benac, Major; D'Auberville, Second Councillor; de la Freniere and Le Breton, "Conseillers assesseurs"; Des Closeaux, Commissaire; and Raguet, acting as Procureur General in the absence of M. Fleuriau, plaintiff and accuser against Baraca, accused of having assassinated Taca, his wife. Following petition of Sr. Raguet, examination of corpse, proces verbal of same, made before M. D'Auberville by Surgeon Gueydon, inquiry before M. Lafreniere, and conclusions of the Procureur General, Council has ordered bodily apprehension and confinement in the prisons of this city, against said Baraca.

Signed: Lenormant; Vaudreuil; D'Auberville; Bobé Descloseaux; De Benac; huchet de Kernion; de la lande.

No. 1153.

Interrogation of Baraca.

April 15, 1748. Interrogation of Baraca, negro owned by the King, before M. Lafreniere, accused of having assassinated his wife, Taca, also a slave of the King. He said he was named Francois, called Baraca, of the Poulav nation, and that he had been baptised. He said that he had not gone far from the "desert" of the King and did not leave the woods; that some Indians near M. Barbin's plantation fed him and crossed him over the river near the Barataria Canal, and as it was night he went into the woods towards the King's plantation, where he slept. He saw Lourseau, whom he asked about his children. He answered that they had given them to negroes to care for. He said that he was taken in the camp of the King's cabins, where he had gone to seek a pirogue to cross the river, and that the overseer brought him here last night. He said that he was not quarreling with his wife, but that he was always joking. He was very friendly with Flatague, but since his wife's death they are angry; that he was not jealous.

Order to communicate to the Procureur General of the King.

Signed: Lafreniere.

2 pp.

Order of re-examination and confrontation of witnesses heard against Baraca.

April 22, 1748. Before the Councillors aforesaid, on petition of the Procureur General, plaintiff and accuser, against one Baraca, slave of the King, at present a prisoner, defendant and accused: Considering the complaint of M. Raguet, acting as Procureur General on date of March 9th; the proces verbal drawn up by Surgeon Gueydon on the corpse of one Taca, wife of the accused Baraca, in the presence of M. D'Auberville, of the Procureur General, following the order of M. Le Normant, Commissioner of the Marine and First Councillor; the inquiry made against said Baraca, on date of February 9th; the decree of bodily apprehension on March 9th; imprisonment of accused entered on Registers on the 14th instant; his interrogation on the 15th instant, together with the conclusions of Sr. Raguet, in his official capacity; the whole considered, the Council has ordered that the witnesses heard in the inquiry be re-examined and confronted.

Signed: Noyan; Lafreniere; huchet de Kernion; Le Bretton; Delalande; D'Auberville.

No. 1156.

Re-examination of witnesses against Baraca.

Re-examination of René Antoine Millet, overseer of the King's plantation, and of Antoine Flatague and Joseph "L'Ourset", slaves of the King.

Testimony of René Antoine Millet was read to him, and he affirmed that it was the truth, and signed. Signed: Millet; Lafreniere; Henry, Greffier.

Antoine Flatague, after having heard his testimony read, maintained it, saying that he had nothing to add thereto nor to diminish, and declared that he did not know how to write. Signed: Lafreniere; Henry, Greffier.

Joseph "La Oursot" also maintained that his testimony was the truth and that he had nothing to add thereto nor to diminish, and declared that he did not know how to write. Signed: Lafreniere; Henry, Greffier.

Order to communicate to the Procureur General of the King. Signed: Lafreniere.

No. 1155.

Confrontation of witnesses heard with Baraca.

April 25, 1748. Was brought before us by the Jailer of the prisons, the accused Francois Baraca, a slave of the King, with whom was confronted René Antoine Millet, overseer of the plantation, first witness in the inquiry. Both said that they knew each other well, and the Greffier having read to them their testimony, Millet said that it was the truth, and Baraca said that he had no reproaches to make. The deposition and

Confrontation of Millet with Baraca.

re-examination of witnesses was then read to the accused, who said that it was not with a firebrand that he struck his wife but with a stave from a pail, and that he did not believe he had hurt her much, and that all else that Millet had said was true. He declared that he did not know how to write. Signed: Lafreniere; Millet; Henry, Greffier.

Confrontation of Flatague with Baraca.

Antoine Flatague was then confronted with the accused. After oath, they both said that they knew each other. Flatague affirmed his testimony, and the accused said that it was true that he was in his cabin and that he gave him tobacco, but that it was not true that his wife complained of him, and that he did not strike her with a firebrand but with a stave of a pail; that he was on the piece of drift wood when pursued, but that it was not true that he dared and upbraided the Commander; that he has told untruths, whilst Flatague maintained his testimony, and declared that word for word it was the truth. Each persisted in what he advanced, and both declared that they did not know how to sign. Signed: Lafreniere; Henry, Greff.

Confrontation of Loursot with Baraca.

Joseph Loursot, third witness, was the next confronted with the accused. They said they knew each other. Loursot persisted in his testimony, saying that it was the truth, and the accused maintained that he did not strike his wife with a firebrand ("tison"), but with a stave from a pail, and also that he had no quarrel with his wife and that it is false that he was jealous; that he escaped on drifting wood, but that he did not insult and dare the Commander. Each persisted in his testimony, and both declared that they did not know how to write. Signed: Lafreniere; Henry, Greff.

Order to communicate to the Procureur General of the King. Signed: Lafreniere.

No. 1157. 1½ pp.

Summary of case against Baraca, with penalty recommended.

May 3, 1748. Charge of the Procureur General, plaintiff and accuser, against Francois, called Baraca, slave of His Majesty, defendant and accused: Seen by us the complaint entered against the accused on date of February 9, 1748; the proces verbal of examination of corpse of the wife of the accused, by Surgeon Gueydon, in the presence of M. D'Auberville, on date of the said day; the inquiry on the 10th of the said month; the decree of bodily arrest rendered on our conclusions on date of March 9th; the interrogation of the accused made by M. Lafreniere, Councillor Commissioner on this case, on the 15th of the said month; the judgment rendered on our conclusions, ordering that witnesses heard in their testimony

in the inquiry be re-examined in their depositions, and even confronted with the accused, on date of April 22nd; re-examination of witnesses in their testimony, on date of April 25th; confrontation of said witnesses with said Baraca, the accused, on date of the said day. The whole seen and considered and examined, I require, for the King, that the said Baraca, accused, be duly charged and convicted of having beaten his wife to death with a billet, in reparation of which let him be condemned to be hung and strangled until death ensue, on a scaffold which for that purpose shall be erected in the public square of this City of New Orleans, and order that his corpse remain thereon twenty-four hours, to serve as an example, and afterwards be brought to the gibbet, and that before his execution he be appraised by two residents whom it shall please the Council to appoint. Given at New Orleans, May third, one thousand seven hundred and forty-eight. Signed: Raguet.

Conviction of Baraca and penalty recommended.

No. 1158. 2 pp.

Condemnation of Baraca reviewed by the Superior Council.

May 4, 1748. Session of the Council of May 4, 1748, where were present MM. de Vaudreuil, Governor; D'Auberville, Commissioner of the Marine, Ordonnateur (Intendant) of the Province, and First Councillor in the Superior Council; de Noyan, Lieutenant of the King; de Membrède, Major; de la Freniere, Councillor; Le Bretton, Delalande, and de Kernion, Councillors assessors. On petition of the Procureur General, plaintiff and accuser, against one Baraca, negro slave of the King, defendant and accused, of having beaten to death one Taca, his wife, also a slave of the King. Seen by the Council the petition presented by M. Raguet, acting as Procureur General, and his enforced order of last February 9th; the proces verbal of the inquest on the body of the negress, with the proces verbal of examination made by Surgeon Gueydon of same date; the inquiry; decree of bodily arrest of March 9th; the interrogation undergone by said Baraca on April 15th; re-examination of witnesses on the 25th of same month, and confrontation on the same day. The whole considered, together with the conclusions of the Procureur General of the King, the Council has declared the said Baraca, named Francois, duly charged and convicted of having beaten his wife to death with a billet of wood, in amends for which he is condemned to be hung and strangled, until death follows, by the Executor of High Justice, on a scaffold which for that purpose shall be erected on the Public Square of this City, where his dead body shall remain exposed during twenty-four hours, to serve as an example, and then "inhumed". Given in the Council Chamber on the fourth of May, one thousand seven hundred and forty-eight.

Signed: Vaudreuil; Membrede; Noyan; Le Bretton; Delalande; Huchet de Kernion; Lafreniere; D'Auberville.

No. 1159. 3½ pp.

Interrogation of Baraca before the Superior Council.

May 4, 1748. Criminal Session of the Council, on May 4, 1748, where were present MM. de Vaudreuil, Governor; D'Auberville, Commissioner and Ordonnateur, and First Councillor; de Noyan, Lieutenant of the King; de Membrede, Major; de la Freniere, Councillor; Le Bretton, Delalande, and de Kernion, Councillors Assessors. Considering the extraordinary suit instituted on petition of the Procureur General of the King, plaintiff and accuser, against Baraca, slave of the King, defendant and accused, the Council has ordered that said Baraca be brought from the prison and interrogated on the witness stand. This done, the said Baraca took an oath to speak the truth. Interrogated on his name, his age, his trade, etc., and if he knew the negress Taca. Asked if he struck her with a billet, he answered that it was a stave from a pail; asked why he struck her, he answered that when he asked his wife for food, she grumbled, that he was smoking and lit his pipe where his wife was, and that he struck her with a stave; asked if he went to bed, he said that he went up towards Mr. Barbin's plantation, and meeting an Indian he asked him to cross him on the other side of the river, and that having crossed it he remained there until he was arrested and imprisoned. Interrogated why he had given his wife a blow that had killed her, he answered that he was disputing with his wife who was near the door, that she went in near the fire with a stick between her legs and he thought that she raised it on him, which obliged him to strike her with the stave, she fell and seeing a great misfortune. . . . He said that this is the truth and that he does not know how to write. The said negro was sent back to prison.

Signed: Noyan; Le Bretton; Lafreniere; huchet de Kernion; Delalande; D'Auberville.

February 11.
No. 1143. 5 pp.

Proces verbal of sale of movables after decease of Sr. Bary.

On Petition of Francois Chaler on January 27th, as tutor of minor heirs of deceased Louis Assailly, called Tranchemontagne, and Theresa Bret, deceased several years ago, sale of their goods was made in the presence of M. Raguet, acting as Procureur General. The inventory, made after Pierre Bary's death, is dated November 18, 1745. Sale of goods enumerated follows, which amounted to 263 livres.

Signed: Chaler; Raguet; Lenormand.

31107. 4487. 4 pp.

Inventory.

February 17, 1748. Inventory made on petition of Catherine Baril, widow of Jean Arlus, master builder of ships. Signed: Lacale; F. Gaspar Cap. Miss. curé; Tixerant; Mark X of Widow Cerlui; Baldit.

Certified by Tixerant, on this day. Signed: Chantalou; Henry, notary.

February 12. 2 pp.

Petition to Superior Council by Baptiste Charras, indigo-maker, stating that he had hired to Madam Daunois a negress and her child for sixteen months at a very reduced figure, which Mrs. D. wishes to diminish, wherefore he has recourse to you to cite the lady, to condemn her to full payment.

Petition to cite.

Signed: Garic, for petitioner who does not know how to sign.

Permit to cite.

February 12, 1748. Permit to cite, signed: Lenormant.

Notice of citation.

February 17, 1748. Notice of citation served on Mr. Daunoy at his domicile in New Orleans. Signed: Lenormand.

Notice of citation.

February 17, 1748. Notice of citation before Council served on Sr. Charras at his domicile by Sheriff Lenormand.

February 15. 5½ pp.

Petition to Superior Council by Francois Le Melle, called Bellegarde, a baker of New Orleans, for recovery of a sum due him by Madam Gervais. Signed: Le Melle; Garic.

Petition for recovery of a debt.

Permit to cite.

February 15, 1748. Permit to cite, signed: Lenormant.

Notices of citation.

February 16, 1748. Notices of citation served on Le Melle and Madam Gervais by Sheriff Lenormand.

Certified statement.

February 14, 1748. Certified statement of merchandise sold to Madam Gervais; certified as the true amount due by Gervais succession. Signed: Le Melle.

Protest of Le Melle.

February 14, 1748. Excerpt from Registers of Superior Council of protest entered by Le Melle to raising of seals or division of returns of the Gervais succession before payment of above debt. Signed: Henry, Greff.

Certification of above debt.

February 14, 1748. Certification by Olivier Devezin that he knows that this debt is due, for having heard her say so three days before her death.

31085. 4484.

Petition for lease of property of the above succession.

February 14, 1748. Petition to M. Le Normant, Commissioner of the Marine, by Louis Langlois and Janis, as tutor and subrogate tutor of the minor heirs of deceased Widow Gervais, stating that they are charged with a house in the city, a plantation, and slaves, owned by said minors, which they pray to be allowed to lease promptly for fear of damage. No signature.

Permit to lease.

February 14, 1748. Permit to lease. Signed: Lenormant.

31086.

Order for lease of above property.

Demand of the Procureur General that after posting and advertising the farm be leased to the highest bidder, for three years, on the conditions to be explained to the bidders. Signed: Raguet. (Date is January 14th, which is evidently an error.)

Adjudication of above lease.

February 14, 1748. Lease to be adjudicated before Councillor Lafreniere, by order of Lenormant.

Public notice of lease.

Notice to the public that the plantation of deceased Widow Gervais will be leased for three years, with the slaves thereon, rent to be paid every six months. Notice issued on March 10, 1748. Signed: Lenormand.

Enumeration of slaves on the plantation.

List of Slaves: Therese, 35 years; Tomalle 12, Angelique 10, Alexandre 5, Louis 3, her children; Therese, aged 60 years and infirm, on the plantation; L'Espernace, 45 years; Francoise, 30 years; Charlotte, without children; Laurent, 7 years; Jassemin, 50 years; Marie, 40 years. Children: Cachemire, 18 years; Basile, 9 years; Joseph, 6 years; Magne, 3 years—16 in all.

31087.

Second notice of above lease.

March 17, 1748. Second Notice of lease to be adjudicated of plantation and slaves of deceased Widow Gervais.

February 15.

31091. 4485.

5 pp.

Debtor's sale.

Sale of slaves and effects of deceased George Cappe, by Michel in default of a sheriff, before M. Trenaunay Chanfret. Enumeration of items in sale follows, covering four pages, and amounting to the sum of 766 livres, 10 sols, which returns will be employed to liquidate his debts, and the surplus remitted to the Attorney of Vacant Estates to be sent to his heirs.

February 17.

Listed 600.

Receipt.

Acknowledgment by Louis Jaubar, resident of Natchitoches, to Pierre Ancellin, for two hundred piastres, for which he promises to furnish skins next year. Signed: Garic, avt; Mark X of Jaubar. (The two following letters are signed by "Jaubarre" or "Jaubard".)

Letters from Jaubar, from Natchitoches.

June 17, 1748. (Dated from "Natchitoche") **Acknowledging** letter promising skins in May. Received 200 pounds of balls, sends a basket as asked, etc. Signed: Jaubarre.

Listed 608.

December 30, 1748. Letter addressed to Mr. Ancellin, dated from Natchitoches, and signed by "Jaubard", informing him that he sends 254 skins; would have sent some skins with hair, but the pirogue was too heavily loaded; will come down later.

February 22.

Vol. 3. 31116.

4489. 1½ pp.

Procuration.

Procuration by Sr. Jacques Chauvin, merchant of New Orleans, in blank, to collect from Sr. Detaille, an officer in the Marine Troops, a note made by him in favor of Jacques Chauvin, before his departure for France. Signed: Chauvin; Chantalou; Lenormand; Henry, notary.

February 24.

Petition to have account rendered.

Petition to Mr. Le Normant, Commissioner of the Marine, Ordonnateur and First Judge, by Capraise Mathieu, stating that by virtue of a procuration before M. Massac, Greffier of Auguillon, to sell goods of the succession of deceased Calixte, by the Sr. Gerard Péry of New Orleans, and to render account of said succession, also of price of sale of two Savage slaves which were entrusted to him.

Permit to cite.

February 24, 1748. Permit to cite Sr. Péry.

Citation notices.

February 24, 1748, and March 7, 1748. Notices of citation served on above dates to Sr. Gerard Péry by Seriff Lenormand.

7½ pp.

Defense of Péry.

(No date). Defense by Sr. Gerard Péry against Sr. Capraise, who pretends that he is charged with procuration of Sieur Descairac. Signed: G. Péry.

1½ pp.

Petition for recovery of debt.

February 24, 1748. Petition to Superior Council by Sr. Capraise Mathieu, for the recovery of the sum of 27 livres, in piastres, therefore praying that Blanpain be cited. Signed: Mathieu.

Citation notice.

February 26, 1748. Notice of citation served on Blanpain by Sheriff Lenormand.

February 24.

31054. 3 pp.

Proceedings in Fazende succession.

Petition to convene family meeting.

Fazende Succession. Petition to Commissioner Lenormant by Sr. Raguet, acting Procureur General, stating that Mr. Fazende died about ten or twelve days ago, and his widow having died on her plantation yesterday, three miles from the City, leaving numerous minors in want of a tutor to direct their persons, and a subrogate tutor to manage their goods and to be present at the inventory of the goods of this succession, wherefore M. Raguet prays that a family meeting be convened for election of tutor and subrogate tutor, for the interests of said minors. Signed: Raguet.

Petition granted.

February 24, 1748. Ordered to do as petitioned. Signed: Lenormant.

Notices served.

February 26, 1748. Notices of citation served on Sr. Layssard, the brother-in-law of said minors; on Mr. D'Erneville, married to their first cousin; on Mr. Monberault, married to a cousin of the minors; on Mr. Alexandre Viel, surgeon, also married to a cousin; on Mr. La Loere Jousset, cousin by marriage; on Mr. Layssard, the elder; on Mr. Prevost, Agent of the Company of the Indies; on Mr. de St. Martin, friend of the said minors. Signed: Lenormand.

31050.

Election of tutors by family meeting.

February 27, 1748. Those convened to family meeting appeared, to elect a tutor and subrogate tutor to the six minor heirs of Sr. and Dame Fazende: Misses Helene, Francoise and Pelagie and Masters Gabriel, Jacques and Antoine Fazende. Sr. Estienne Layssard, Jr., brother-in-law of the minors, was unanimously elected tutor, and Sr. Alexandre Vielle, a relative of the minors, was chosen as subrogate tutor. Both voluntarily accepted the charge, and after customary oath signed with those present at the family meeting. Signed: E. Layssard; Alexandre Vielle; Derneville; Monberault; Layssard; St. Martin; Prevost; Raguet; Lafreniere.

Demand for homologation of election.

March 1, 1748. Demand by the Procureur General for homologation of aforesaid election. Signed: Raguet.

31053.

Homologation.

Homologation of said election. Signed: Lenormant.

31056.

Petition for homologation of election.

March 1, 1748. Petition to Superior Council by Estienne Layssard and Alexandre Vielle, tutor and subrogate tutor of minor heirs of deceased Jean and Dame Helene Fazende, elected at family meeting convened on last February 27th, that homologation of said election be made, and thereafter inventory, description and estimation of goods of said estate. Signed: E. Layssard.

31029. 15 pp.

Inventory and appraisement of goods of Fazende succession.

March 4, 1748. Inventory and description of all movables, effects, utensils, titles and papers, negroes, negresses, and cattle, houses and plantation, owned by the estate of deceased Sr. and Dame Fazende, taken on said plantation, at eleven A. M., in the presence of Sr. Jacques Fazende, Jr., and his wife, aged about twenty-one years, who swore that nothing had been taken from nor secreted from his parents' goods, which declaration was certified, and proceeded to appraise and enumerate the goods, through fourteen pages. Signed: E. Layssard; Fazende; Bonalgues; Alexandre Vielle; Lenormand; Lafreniere; Chantalou; Raguet.

31023. 6 pp.

Sale of goods of Fazende succession.

July 2, 1748. Sale of goods of estates of deceased Sr. and Dame Fazende, by order of Commissioner D'Auberville, on petition of Sr. Estienne Layssard, in the Registry of the Superior Council, which sale has been posted and advertised, goods to be adjudicated to the last and highest bidder. Items of sale are thereafter enumerated through five pages. Returns amounted to 1219 livres, 10 sols, in specie in cash, remitted to the Greffier, in the presence of the Procureur General, M. Raguet, and Sr. Estienne Layssard, tutor of the minors. Signed: Lenormand; Raguet; E. Layssard.

(Note: While this document is numbered previously, it evidently should follow No. 31029).

February 25.

31118. 4490.

Declaration by Madam Paul Rasteau.

Declaration by Dame Marguerite Broutin, wife of Sr. Paul Rasteau, assisted by her father, M. Francois Ignace Broutin, as she is a minor, that a rumor has spread that said Paul Rasteau was shipwrecked and perished with his goods on the coast of Florida. She has frequently asked her parents, with whom she resides, to have prayers and a service said for the repose of his soul, in case he be dead. Finally, a service was celebrated in this Parish. Since then no confirmation of his decease has reached her, but that she wishes to help his soul and not to do

any wrong to his personal affairs in case God has spared him, she makes this declaration, to serve and avail as need may be.

Signed: Broutin Rasteau; Broutin; Chantalou.

(Note: Marguerite Broutin married secondly le Sieur de Pontalba, and was the mother of Louis Xavier de Pontalba.)

February 25.

Vol. 3. 31121.

4491. 5 pp.

De Lino and Broutin marriage contract.

Marriage Contract of Louis Xavier de Lino, Ecuyer Sieur de Chalmette, a native of Quebec, and Madeleine Marguerite Broutin, daughter of Francois Ignace Broutin and Dame Madeleine Marguerite Lemaire, a native of New Orleans, Parish of St. Louis, Bishopric of Quebec. Signed: Louis Xavier Delino de Chalmette; Madeleine Broutin; Broutin; feme Broutin; femme Rasteau; Catherine Le Maire; Vaudreuil; fleury Vaudreuil; Bobé Desclozeaux; Noyan; De Benac; Bellile; Laperliere; D'Auberville Lenormant; le chr Laronde; Hazeur; Delalande; Olivier Devezin; Leverrier; femme Demandeville; Chantalou; Lenormand; Henry, notary.

Lower right hand corner ragged.

February 27.

Vol. 3. 31126.

4492. 3 pp.

Deposit with Rasteau.

Procuration by Leon Berthous, in blank, to collect from Sr. Paul Rasteau, of New Orleans, 4698 piastres, 5 reals, which were loaned at Vera Cruz for account of the constituant by Dominique Lauga, Captain of the ships of Chevalier Grenier, following the order of the letter. Signed: Leon Berthous; Dassance; Piquessary.

Certification of signature.

Certification of signature of Bernard Piquessary, Notary Royal. Signed: Laborde Lissalde; (next name illegible.) Deposited in notarial office, February 27, 1748, by Michel Moulinier.

Procuration to Moulinier.

February 27, 1748. Petition to Superior Council by Michel Moulinier, on his way to Mexico, charged with procuration of Sr. Berthous, Banker of the city of Bayonne, to collect from Sr. Paul Rasteau a deposit which said Rasteau received from Chevalier Grenier, in payment of a note to his order, with which Sr. Rasteau was entrusted at Vera Cruz, to remit to Sr. Leon Berthous. He therefore prays for citation of Sr. Rasteau, to be condemned to pay said debt, damage and interest. Signed: Michel Moulinier.

Citation served on Rasteau.

February 27, 1748. Notice of citation served at the domicile of Mr. Broutin, where Madame Rasteau resides, by Sheriff Lenormand.

Citation served on Moulinier.

March 7, 1748. Notice of citation served on Michel Moulinier, domiciled in the house of Sr. Prevost, to answer before the Superior Council on citation issued to Paul Rasteau on his petition. Signed: Lenormand.

March 1.

1 p.

Conclusions of the procureur General in case of Sens vs. Malboroug.

Conclusions of M. Raguet, acting as Procureur General, in case of André Sens, resident of Les Allemands, on date of last December 16th, plaintiff, vs. Malboroug, accused and defendant. Inquiry made on December 16th and 26th last. Report of Pierre Vautier, Surgeon, on the 23rd of last February. In consequence, Attorney Raguet demands in the King's name that Etienne Daigle, called Malboroug, be ordered to appear in person before M. de la Freniere, Councillor Commissioner in this case, to be heard and interrogated on the facts resulting from said charges and others to be communicated, the whole to be reported, to be ordered thereon what shall appertain.

Signed: Raguet.

March 3.

1½ pp.

Petition for temporary suspension of judgment in case of Volant and Chauvin vs. Graveline.

Petition to Superior Council by Sieurs Gregoire Volant, Captain commanding the Swiss Regiment of Karrer, and Jacques Chauvin, in their name and quality, in the suit pending against Sr. Graveline, husband of their aunt, Julie Lavergne, that a decree has intervened for certain investigations, and that they await the return of Sr. Volant, who has gone there to secure them, wherefore they pray that judgment be suspended until his return.

Signed: Chauvin; Volant.

Order.

March 3, 1748. Order that notification be served on the parties. Signed: Lenormant.

Notice.

March 11, 1748. Notification of above petition and order of Sr. Lenormant served on Bodreau Graveline at the Pascagoulas, where he resides at present, and on Sr. Janis in New Orleans, by Sheriff Lenormand.

Lower margin of document torn.

Slip. Receipt.

Receipt to M. De Gruy for 382 livres. Signed: Bienvenu. Certification, March 23, 1748.

March 4.

2¼ pp.

Petition to Council for recognition of a partnership and payment for labor performed.

Petition to Superior Council by Francois Gervais, inhabitant of this Colony, stating that on the 10th of last June he entered into an association with Valentin Moreau to make palisades at the Fort of the Turn and to build a hut, and as this partnership was only verbal and that the petitioner has fallen ill during the time of said work and before its end, Valentin would wish to exclude him. He has a right to enter into that of the works made on the palisade and on the hut, in which there was some profit. The petitioner represents that with eight other persons he worked from June 10th to December 23rd, when he fell ill. He prays that Valentin Moreau be summoned before you to allow the continuance of said Gervais in said association, and to pay him 100 francs a month for the time he worked. Signed: Gervais.

Permit to cite.

March 4, 1748. Permit to cite at next session of the Council. Signed: Lenormant.

Notice served.

March 5, 1748. Notice of citation served on Sr. Valentin Moreau at his domicile, on petition of Gervais, by Lenormand.

March 5.

1½ pp.

Petition for recovery of a debt.

Petition to Superior Council by Sr. de Montandon, Officer in Karrer's Regiment, stating that he had furnished merchandise to Madam Gervais, paying her a commission thereon, and that the sum of 89 livres is still due him, wherefore he asks that Sr. Louis Langlois, tutor of the minor heirs of said Madam Gervais, be cited to show cause why he should not pay said sum and costs. Signed: Garic, for Mr. de Montandon.

Permit to cite.

March 5, 1748. Permit to cite. Signed: Lenormant.

Notice of citation.

March 6, 1748. Notice of citation served on Sr. Langlois at his domicile, on petition of Sr. de Montandon, by Sheriff Marin Lenormand.

March 5.

Vol. 3. 31129.

4493. 5 pp.

Marriage contract of Daniel Pain and Jeanne Rougeot.

Marriage Contract of Daniel Pain, Guardian of the Stores at Natchitoches, son of Daniel Pain and of Marianne, native of . . . des Epaux, Bishopric of Xaintes, and Miss Jeanne Rougeot, minor daughter of Edmé Francois Rougeot, employed in the King's warehouses, and of Dame Angelique Chastang, a native of New Orleans, Bishopric of Quebec.

Signed: Daniel Pain; Ef Roujot; Angelique; Chartron; jeanne Roujot; Rivard; gueydon; M. L. Ricard; Edmé Roujot; Brosset; J. B. Roujot; Chantalou; Lenormand; Henry, notary.

March 6.

Vol. 3. 31134.

4496. 2½ pp.

Contract of apprenticeship.

Contract of Apprenticeship, passed before Notary, between Guillaume Lemoyne, acting as tutor to Louis Lemoyne, aged sixteen years, and Maurice Levesque, a cobbler. Said Louis Lemoyne to be bound to Levesque for three years, on stipulated conditions.

Signed: Chantalou; Lenormand; Henry, notary.

In good script; lower margin of last page torn.

March 6.

2½ pp. NP.

Petition for recovery of a debt.

Petition to Superior Council, (dated February 13, 1748) by Claude Renaud, called Avignon, and Le Mesle, called Bellegarde, inhabitants of this Colony, for citation of Sr. Cariton, a tailor, to compel him to pay a debt of 4497 livres due on a note dated last January.

Signed: Lafreniere; Lemelle.

Notice of citation served on February 15, 1748.

Third notice served.

March 6, 1748. Third notice served on Sr. Cariton at his domicile, on petition of Srs. Renaud and Lemelle, to appear before Council at its next session; said notice certified by Sheriff Lenormand.

March 7.

Vol. 3. 31138.

4495. 1 p.

Sale of a negro.

Sale of a Negro named Pluto (pièce d'Inde) by Joseph Moreau, residing at the Pascagoulas, to Pierre Gabriel Montelismar, who after examination declares himself satisfied. He was acquired from the succession of deceased Bergeron, whose widow Moreau married; this last sale was for the price of 1500 livres.

Signed: Moreau; Chantalou; Lenormand; Henry, notary.

31137. ½ p.

Receipt and approval.

May 7, 1748. Certification of Joseph Moreau's remittance of price of sale of a negro, Triton, for which he was given receipt on account of the succession of deceased Bergeron. Approval of sale of negro made by said Moreau.

Signed: Prevost (paraph).

March 8.

1½ pp.

Copy of procuration.

Procuration of heirs of Joseph Chauvin de Léry, Sr., granted to their half-brother, Antoine Chauvin de Boisclair, after their emancipation by letters of benefit of age. No signatures.

March 8.

2 pp.

Petition to refute gambling debt.

Petition to Superior Council by Madam Gautreau, stating that she has been surprised by the suit of Nicolas Judice against her husband, at a time when he cannot defend himself since he is absent, seeking to have him condemned in order to seize his tallow and other things brought here on his return from Arkansas, this shown by a decree of November 7, 1744, in which in default Jean Gautreau was ordered to be re-cited. The sole knowledge the lady has of this suit is that she paid a note in favor of de Laurier for merchandise. It is evident that said de Laurier never trusted any merchandise to Jean Gautreau, but once when he was tipsy he made him sign a note for that sum, and to cover himself passed it in the name of Judice, which was not difficult with a man under the influence of liquor. Said de Laurier acknowledged that it was money which he won at the gambling table, adding that it included 60 livres for board and fare, wherefore the petitioner prays that the note be annulled, and plaintiff condemned to pay costs, as the promises and obligations proceeding from games of chance are not enforced by law, as observed in our custom, and that he be compelled to state the nature and quantity of the merchandise delivered for said note.

Signed: "femme Gautreau".

March 8.

31139. 4496. 4 pp.

Examination of damaged goods by Notary Royal.

Official Visit by Notary Royal to Sr. Goudeau's house, to examine merchandise which appears to be damaged, on request of M. Charles Le Roy, second officer on board the Comte de Maurepas, merchant vessel, from La Rochelle, Mr. Pierre Hardy, outfitter. Report of damaged and missing goods as compared with the invoice. Certified as true and correct by F. G. Goudeau; Avignon; Gayot; f. vonnant; Charles Le Roy; peveillé; D. Marthe; Gille Lemonnier; de Latouche; N. M. Schaaff; Sauraint; Chantalou; Henry, notary.

March 9.

No. 1150. 4½ pp.

Judgment in suit between de Léry heirs and Chavoy.

Judgment rendered in suit of Joseph Chauvin de Léry's collateral heirs vs. Chvr de Chavoy, husband of Marie Faucon Dumanoir, widow of the deceased Joseph C. de Léry.

Signed: Lenormant Vaudreuil; D'Auberville; Bobé Desclozeaux; De Benac; Delalande; Huchet de Kernion.

March 9.

15 pp.

Session of Superior Council.

Commission of Charles de la Lande d'Apremont approved by Council.

Session of the Superior Council. Judgments rendered in the following cases:

1. Petition presented by Charles de la Lande d'Apremont. Council orders that he be received in his quality, after administration of the oath. Signed: Vaudreuil; Lenormant; and countersigned by Olivier Devezin and Raguet fils.

Council orders that said commission be filed in Registry.

Induction of Jean Francois Huchet de Kernion into the Council.

2. Petition presented by Jean Francois Huchet de Kernion to recognize his commission and induct him into the Council as Councillor Assessor; whereon order is given for inquiry into his religion and morals, in consequence of which inquiry was made, his commission seen, and signed by Vaudreuil and Lenormant and countersigned by Olivier de Vezin and Raguet, and communicated to the Procureur General, M. Raguet, replacing M. Feluriau during his absence. He was installed in the moment, after the usual oath, and it was ordered that the induction be filed in Registry.

Montandon vs. Langlois.

3. Sr. de Montandon, Swiss officer of troops of the Regiment of Karrer, plaintiff, vs. Sr. Louis de Langlois, defendant: Considering petition presented by Sr. Garic for Mr. de Montandon, for payment by Sr. Langlois of 8915 livres, 8 sols, as balance due on merchandise given him for sale to deceased Madam Gervais, as per invoice of October, 1746. Council orders payment for merchandise and costs by succession of the deceased lady.

Renaud and Lemelle vs. Cariton.

4. Sr. Claude Renaud, called Avignon, and Francois Lemelle, called Bellegarde, plaintiffs, vs. Jean Cariton, a tailor of this Colony, defendant: Cariton is condemned to pay the sum of 4497 livres carried in his note, and costs. Council has condemned Cariton by default, and orders that he be cited again at the next session. Costs pending.

Boyau vs. Cariton.

5. Sieur Boyau, plaintiff, vs. said Cariton, defendant: Judgment by default, Cariton cited again. Costs pending.

Moulinier vs. Rasteau.

6. Michel Moulinier, holding procuration of Leon Bertous, banker of Bayonne, plaintiff, vs. Sr. Paul Rasteau, defendant: 4698 piastres are due, which Sr. Rasteau received from the Chvr. Grenier, charged to Sr. Rasteau at Vera Cruz by Sr. Lauger, which were to be remitted to Sr. Bertous at Bayonne. Copy was sent to Madam Rasteau, his wife, who declared that she had no knowledge of the affairs of her husband, who is absent. He

must satisfy this debt or he shall be thereto compelled by all legal means, even bodily apprehension. Council has condemned Sr. Rasteau by default and ordered that he be cited again.

Nicolas Judice vs. Louis Giscart.

7. Nicolas Judice, plaintiff, vs. Sr. Louis Giscart, defendant, Sr. Chantalou acting under procuration of Giscart called Benoist: The said petition states that the sum due amounts to 637 livres, and moreover the value of 250 pounds of tallow, which must be paid by the first convoys said Benoist sends from Arkansas. Council has rendered judgment in default against Chantalou and ordered him to pay for the tallow, under penalty of arrest and seizure, and orders that he be cited again, however ordering seizure of all Sr. Benoist's property in Sr. Chantalou's hands until payment. Costs pending.

Capraise Mathieu vs. Gerard Péry.

8. Sr. Capraise Mathieu, as holding procuration of Sr. Manial and Miss Jeanne Descayrac, coheirs of Sr. Antoine "Descairac", their brother, deceased in this Colony, plaintiff, vs. Sr. Gerard Péry, executor of the succession of deceased Calixte Descairac, to furnish account of sale of effects of said succession and of slaves, with which he was charged. Council has rendered judgment in default against Sr. Péry, condemned him to render account to plaintiff of succession of deceased Calixte Descairac within a month, and to pay costs.

Mathieu vs. Blanpain.

9. Capraise Mathieu, plaintiff, vs. Joseph Blanpain, defendant: Considering petition of said Mathieu and acts of the 24th and 26th of last February, concluding that Mathieu be condemned to pay the sum of 127 piastres, following his note of April 1st, interest and costs. Blanpain condemned in default and ordered to be cited again at next session of the Council. Costs pending.

Nicolas Judice vs. Joseph Blanpain.

10. Nicolas Judice, plaintiff, vs. Joseph Blanpain, defendant: Defendant ordered to pay the sum claimed on both notes of April 14th and May 24th, and to pay costs. The decree in default against defendant, ordering that he be cited again. Second judgment in default against defendant, who is ordered to pay 550 piastres on face of notes, with interest thereon until this day, and costs.

Nicolas Judice vs. Joseph Blanpain.

11. Nicolas Judice, acting as tutor to the minor son of Jacques Judice, plaintiff, vs. Joseph Blanpain, defendant: Decree issued in default against defendant on last January 7th, in favor of the plaintiff, on petition exposing that Blanpain is indebted to the sum of 550 livres for rent of three negroes and one negress, owned by succession of deceased Jacques Judice, adjudicated to him at the sum of 1100 livres per annum, payable every six

months. Condemned to pay the first term without prejudice to the others, and to pay costs. Second judgment rendered in default against defendant, and order to pay said rent, interest thereon, and costs.

Nicolas Judice vs. Jean Gautreau.

12. Nicolas Judice, plaintiff, vs. Jean Gauterot (Gautreau), called La Musique, defendant: Decree in default against defendant on date of November 7, 1744, ordering "Gauterot" to pay plaintiff the sum of 1000 livres carried in his note of October 9, 1743, in favor of Sr. Baudemont, called Desloriers, which was transferred to order of Sr. Nicolas Judice. They were cited again, on petition presented by the wife of said Gautreau, expressing surprise that her husband should be sued when he is absent from the City, having no knowledge of any merchandise from Desloriers, who was never in condition to grant credit, that the note was signed by Gautreau when he was under the influence of liquor, for a gambling debt, and passed to said Judice, asking that said note be annulled, otherwise to have a statement in detail furnished by Desloriers or merchandise delivered, and certified. Council gave a second judgment in default against defendant, but on the conclusions of the Procureur General orders Baudemont, called Desloriers, to appear before the Council before final judgment. Costs pending.

Gueydon vs. Langlois.

13. Sr. Gueydon, Surgeon Major, plaintiff, vs. Louis Langlois, as tutor of the minor heirs of Widow Gervais, defendant: Council orders Langlois, as tutor, to pay 132 livres, on memorandum, which he has certified, and costs.

Gervais vs. Moreau.

14. Francois Gervais, settler in this Colony, plaintiff, vs. Valentin Moreau, defendant: Council orders Moreau to continue the said association, unless he prefers to reimburse said Gervais for all advances made by him and to pay him for six months labor amounting to 1076 livres. Council has rendered judgment in default against defendant, and ordered them to appear again before the Council at its next session.

Charras vs. Daunoy. (Lafreniere and Le Bretton retired.)

15. Jean Baptiste Charras, indigo-maker, plaintiff, vs. Sr. Daunoy, defendant: Council orders Daunoy to pay Charras the sum of 400 livres, for hire of a slave up to date, and to pay costs.

Boisclair vs. de Chavannes.

16. Sr. Nicolas Chauvin Boisclair, as tutor of the minor heirs of deceased Sr. Joseph Chauvin de Léry, plaintiff, vs. Sr. Jean Baptiste de Chavannes, defendant: Council orders defendant to be dismissed in default of the plaintiff to appear, and orders them to appear at its next session. Costs pending.

Carriere vs. de Benac and Nicolas Judice. (Lafreniere, Le Bretton and de Benac retired.)

17. Jacques Carriere, plaintiff, vs. Sr. de Benac and Nicolas Judice, defendants: The petition exposes that in December, 1746, a cypress pirogue, measuring 33 feet in length by 3 feet 4 inches in width, with six oars and a rudder; moreover a rudder of another pirogue 40 feet in length, were taken from his bayou by a negro owned by Sr. de Benac and one owned by Sr. Judice; said negroes were brought here from Havana, where they had taken refuge, by the King's vessel "La Mégère." The said plaintiff demands payment for his pirogue ("voiture"), oars and rudder, and asks that M. de Benac and M. Nicolas Judice, tutor of minor heir of deceased Jacques Judice, pay the sum of 250 livres, on the offer he made to prove that they were taken by them. The Council having heard the case, reduced the price demanded to 225 livres, of which 75 livres shall be paid by M. de Benac and a like sum by M. Judice, as there was also a free mulatto who was an accomplice of the two negroes. Costs on defendants.

Heirs of Joseph Chauvin de Léry vs. de Chavoy. (De Noyan, Lafreniere and de Benac retired.)

18. Sr. Nicolas Chauvin de Boisclair, in his name and acting for Francois, Marguerite and Laurence Chauvin de Léry, consanguineous brother and sisters; Sr. Antoine Desilets, also a brother and coheir of deceased Sr. Joseph Chauvin de Léry, their brother, and of deceased Jean Baptiste de Léry, their nephew, plaintiffs, vs. the Chevalier de Chavoy, as husband of Dame Marie Faucon Dumanoir, previously widow of deceased Sr. Joseph Deléry, mother and natural tutrix of deceased Jean Baptiste Deléy, defendant. No signature.

Document in good condition.

March 9.

No. 1147. 1 p.

Adjournment of Sr. Daigle.

Adjournment of Sr. Daigle, on petition of the Procureur General of the King, for one Estienne Daigle, called Malboroug, defendant and accused: Seen the petition of M. Raguet, acting as Procureur General; the inquiry on dates of last February 24th and 26th; the report by Vautier, surgeon, on February 23rd; the conclusions of the Procureur General, ordering Estienne Daigle, accused, to appear before M. de la Freniere to be interrogated on the facts, charges and inquiry, before the Procureur General commits his conclusions to writing. Given in the form of a complaint by André Sens on December 16th, carrying permit for inquiry. Signed: Vaudreuil; Lenormant; D'Auberville; Bobé Desclozeaux; De Benac; Delalande; Huchet de Kernion.

March 9.

1½ pp.

Petition for induction into Superior Council by Jean Francois Kernion.

Petition to Superior Council by Jean Francois Kernion, who has been granted a commission as Councillor Assessor by MM. de Vaudreuil and Le Normant, asking to be received as such after the usual formalities. Signed: Huchet de Kernion.

Order to communicate to Procureur General.

March 9, 1748. To be communicated to the Procureur General. Signed: Lenormant.

Consent of Procureur General that inquiry be made.

March 9, 1748. Consent of M. Raguet, acting Procureur General, that inquiry be made into the life and morals and religion of Sr. de Kernion, for his induction into the Superior Council, on commission granted by de Vaudreuil and Lenormant. Signed: Raguet.

The inquiry conducted.

March 9, 1748. Inquiry made into the life and morals of Mr. Francois Huchet de Kernion, by virtue of a commission granted by Messrs. Vaudreuil and Lenormant, to him as Councillor Assessor, to which was proceeded as follows:

Testimony of Captain D'Erneville.

Sr. Pierre Henry D'Erneville, Captain of Marine troops, aged about thirty-four years, of the Catholic, Apostolic and Roman religion, testifies that he has known M. Kernion, warden of this Parish and resident of this City, and he has seen him perform acts of Catholicity for a number of years. His testimony having been read to him, he declared that it was the truth. Signed: Lafreniere; Derneville.

Testimony of Surgeon Saint Jean.

Sr. Gregoire St. Jean, surgeon Major of Mobile, aged about twenty-seven years, of the Catholic, Apostolic and Roman religion, has known M. Kernion since four or five years as a good practising Catholic. His testimony having been read to him, he said that it was the truth, and signed: Lafreniere; Saintjean.

March 9.

31143. 2 pp.

Copy of letter from Babin to Garic. (See March 28, 1748, 31235.)

Copy of a letter written to Jean Baptiste Garic from Pensacola, on date of last February 15th, by M. Babin, first pilot of the King's frigate La Floride, there at present, telling him that he must have heard of the deaths of MM. Rasteau and Vincent, who were miserably drowned in "la Riviere du Peignon", with six Frenchmen and four Spaniards. Mr. Fleuret who was with him saved himself and reached Florida; in the said river to Florida there were seventeen boats lost. Mr. Rasteau had reached land, the Governor sent him a small boat (chabe), which met them

at the bank and passed the Mosquite river. The unfortunates, walking along the bank, had the misfortune to meet a small canoe in which they embarked to cross the Peignon river, and at its mouth the heavy seas caused them to overturn. The news was given by Mr. Fleuret and another, who escaped. They told me that they brought to the Governor the cane, hat and watch of Mr. Rasteau, and that he answered that this would serve to have his soul prayed for and for that of Mr. Comet. If he had left Carolina he could have been recommended to God; the weather was cruel and all the boats on this coast were lost in the port of Florida, owing to the narrowness of the river. There were twelve boats thrown on shore, but thanks to God they were all delivered; I have nothing else to write.

Certification of authenticity of above letter.

"I certify that I received the present letter from Mr. Babin, chief pilot of the King's frigate 'the Florida', and as it was in Spanish I translated it word for word into our language, conformably to the original, in faith of which I have given the present copy to serve and avail to such end as may be thought good. At New Orleans, March 9th, 1748. Garic avt."

31145.

Excerpt from a letter to Governor Vaudreuil, with news of Rasteau's death in Florida.

Excerpt from a letter written to Mr. de Vaudreuil, Governor of the Province of Louisiana, by M. Bloquin, French Consul at Havana, on date of January 3, 1748. "Monsieur, the Governor of Florida, writes in his letter of November last of the sad accident which happened to Mr. Paul Rasteau on his return from Carolina, when he was drowned, the eleventh, on the Florida coast. Signed: Bloquin."

Certification of authenticity of above letter.

A true copy collated to the original in the moment, rendered to Mr. the Governor by us, Chief Clerk (greffier) of the Superior Council of Louisiana, this 8th of March, 1748. Henry, Greffier.

March 9.

No. 1151.

Judgments rendered by Superior Council.

Judgments rendered by Superior Council, where were present MM. de Vaudreuil, Governor; Le Normant, Commissioner General of the Marine and First Councillor; de Noyan, Lieutenant of the King; de Benac, Major; D'Auberville, Second Councillor; de Lafreniere, Councillor; Le Breton, Councillor Assessor; and Descloseaux, Commissioner Councillor.

Induction of de la Lande as Councillor.

1. Considering the petition presented by Sr. de la Lande, to approve of his commission as Councillor Assessor, the conclusions of the Procureur General of the King, after the customary oath taken by Sr. de la Lande, he was inducted into the Council and his commission filed to be executed in its form and tenor.

Induction of Kernion as Councillor.

2. On petition presented by Sr. Kernion, his commission as Councillor Assessor laid before the Council, inquiry as to his life and morals, the conclusions of the Procureur General, the Council has installed the said Sr. Kernion in the Council and ordered his commission to be filed in Registry.

De Montendon vs. Louis Langlois, tutor of heirs of Widow Gervais.

3. Sr. de Montendon, Officer in the Swiss troops, petitioner and plaintiff, vs. Sr. Louis Langlois, acting as tutor of the minor children of Widow Gervais, defendant: The Council has condemned said Langlois to pay the amount of said bill to Sr. de Montendon, (81 livres, 15 sols, 8 deniers,) and costs.

Renaud and Lemelle vs. Jean Cariton.

4. Claude Renaud, called Avignon, plaintiff, and Francois Lemelle, called Bellegarde, also plaintiff, vs. Jean Cariton, defendant: Judgment in default against said Cariton, and order that Jean Cariton be cited at the next session. Costs pending.

Widow Boyer vs. Jean Cariton.

5. Widow Boyer, plaintiff, vs. Jean Cariton, defendant: Judgment in default against defendant, and order to cite again. Costs pending.

Moulinier vs. Paul Rasteau.

6. Michel Moulinier, plaintiff, vs. Paul Rasteau, defendant: Judgment in default against defendant, and order that he be cited again. Costs pending.

Nicolas Judice vs. Louis Giscard.

7. Nicolas Judice, plaintiff, vs. Louis Giscard, called Benoit, Sr. Chantalou acting for defendant: Judgment in default against Chantalou; however, Council has ordered seizure in hands of Chantalou of funds of said Benoit for preservation. Costs pending.

Capraise Mathieu, acting for heirs of Descairac, vs. Gerard Péry.

8. Sr. Capraise Mathieu, acting for heirs of Descairac, plaintiff, vs. Sr. Gerard Péry, defendant: Judgment in default against defendant, and condemning him to render account to the plaintiff of the succession of deceased Calixte Descairac, in a month at latest, according to the conclusions of the Procureur General of the King.

Capraise Mathieu vs. Joseph Blanpain.

9. Capraise Mathieu, plaintiff, vs. Joseph Blanpain, defendant: Judgment in default against defendant, and order that he be cited again. Costs pending.

Nicolas Judice vs. Joseph Blanpain.

10. Nicolas Judice, plaintiff, vs. Joseph Blanpain, defendant: Considering the decree of default against defendant, on date of last January 7th, Council condemns said Blanpain to pay the 550 livres carried in his note, and interest thereon.

Judice vs. Blanpain.

11. Nicolas Judice, acting as tutor of Jacques Judice, plaintiff, vs. Blanpain, defendant: Considering decree of default of last January 7th, defendant is condemned to pay rent due, and interest and costs.

Nicolas Judice vs. Jean Gauthreau.

12. Nicolas Judice, plaintiff, vs. Jean Gauthreau, defendant: Judgment in default against defendant on date of November 7, 1744; conclusions of the Procureur General are to the effect that Louis Baudemont, called Desloriers, be called into the case at the next session. Costs pending. Second judgment in default against defendant.

Surgeon Gueydon vs. Louis Langlois, as tutor of the Gervais minors.

13. Sr. Gueydon, Chief Surgeon, plaintiff, vs. Louis Langlois, acting as tutor of minor heirs of Widow Gervais, defendant: Council orders Langlois, as tutor, to pay Sr. Gueydon the sum of 132 livres, following his memoranda, which he certifies.

Francois Gervais vs. Valentin Moreau.

14. Francois Gervais, plaintiff, vs. Valentin Moreau, defendant: Judgment in default against defendant, and order that he be cited again. Costs pending.

Charras vs. Daunoy.

15. Sr. Baptiste Charras, plaintiff, vs. Sieur Daunoy, defendant: Considering the petitions presented by said Charras on last February 12th and 17th and on the 7th of the present month, stating that the negress was rented to Mrs. Daunoy, in November, 1746, at 25 livres per month, and during sixteen months at that modest price, he prays that Daunoy be condemned to pay the sum of 400 livres for the sixteen months of rent, and to costs. Council has decided in default against the defendant for non-appearance, and orders that he be cited again. Costs pending.

Nicolas Chauvin, tutor of Deléry minors, vs. Jean Baptiste de Chavannes.

16. Mr. Nicolas Chauvin de Boisclair, acting for the minor heirs of deceased Sr. Joseph Chauvin de Léry, plaintiff, vs. Jean Baptiste de Chavannes, defendant: Sr. de Chavannes being indebted to deceased Sr. Deléry for 100 quar-

ters of corn in grain, following his note, he paid 36 quarters and contests payment of the remaining 64. The Council dismissed the defendant as the plaintiff did not appear, and orders that at the next session they will give their reasons. Costs pending.

Jacques Carriere vs. de Benac and Nicolas Judice.

17. Jacques Carriere, planter, plaintiff, vs. Mr. de Benac and Nicolas Judice, defendants: Considering the petition presented by Jacques Carriere, stating that in December, 1746, a cypress pirogue was taken from his bayou, with six oars and the rudder of another pirogue, 40 feet in length, by a negro owned by Mr. de Benac and another belonging to Mr. Judice, said negroes going from here to Havana, having taken refuge on the King's ship "La Mégère", payment for said pirogue, oars and rudder is due by the owners of said slaves. The Council therefore orders payment of the same, but has reduced the price to 225 livres for pirogue, rudder and oars, 75 livres to be paid by de Benac and 75 livres by Judice; and as there was a free mulatto implicated in the theft, recourse will be had against him for the remainder. All defendants to bear costs.

Heirs of deceased Joseph Chauvin de Léry vs. Sr. de Chavoy, who married the widow.

18. Mr. Nicolas Chauvin de Boisclair, in his name and as tutor of Francois, Marguerite and Laurence de Léry, Sr. Antoine Chauvin des Islets, also a coheir, plaintiffs, vs. the Chevalier de Chavoy, in the name of Sr. Joseph Chauvin de Léry's widow, now his wife, mother of Jean B. de Léry. The preceding record ends here, without giving the judgment nor signature.

In this last case MM. de Noyan and de la Freniere had retired, and Mr. de Benac came into it.

March 9.

31146. 4497. 4 pp.

Lease of plantation, cattle and slaves.

Judicial Lease of a plantation, cattle and slaves, of the Mahyeux estate, granted by Francois Mayheux, as tutor of his minor sisters, Madeleine and Marguerite Mayheux.

Signed: Allain; Meuillion; Rivard; veu Trenaunay Chanfret; Potin, notary.

March 9.

No. 1147.

Malbouroug cited to appear before Superior Council.

On Petition of Sr. Raguet, Sr. Daigle, called Malbouroug, is ordered by the Council to appear before its members, to be interrogated on the charges brought against him by the Procureur General of the King. Signed: Lenormant; Vaudreuil; D'Auberville; Delalande; Bobé Descloseaux; De Benac; Huchet de Kernion.

March 9.

Duplicates.

Duplicate of judgments rendered under same date as in No. 1151, above. No signatures.

March 9. 2¼ pp.

Charras vs. Madam Daunoy. Citation notice.

Excerpt from Registers. Suit of Jean Baptiste Charras, indigo-maker, vs. Madam Daunoy, for recovery of 400 livres.

April 30, 1748. Notice of citation served on Sieur Daunoy, on petition of Jean Baptiste Charras, by Sheriff Lenormand.

March 9.

1150. 4 pp.

Judgment in case of Boisclair vs. Chavoy.

Judgment in the case of Sr. Boisclair vs. Chavoy and his wife. Heirs must pay one-half of the debts, with Sr. and Dame de Chavoy on the surplus. Signed: Lenormant; Vaudreuil; D'Auberville; Bobé Descloseaux; De Benac; Delalande; Huchet de Kernion.

March 9.

4 pp.

Judgment in case of Moulinier vs. Paul Rasteau.

Moulinier, acting under procuration of Leon Berthous, against Paul Rasteau, for recovery of a deposit entrusted to said Rasteau. The said note is registered in the Registry of the Admiralty. Sr. Rasteau is absent from the Colony, but he is condemned to pay without delay the sum due, and to be forced to do so by all legal means, vouchers having been produced. Judgment in default against said Sr. Paul Rasteau.

March 10.

Vol. 3. 31151.

4498. 3 pp.

Sale of house and lot.

Sale of Lot by Sr. Bancio Piemont and his wife, Dame Jeanne Raguet, to Sr. Gueydon, Surgeon of New Orleans. On it is a house, the lower story of which is built of brick, with a gallery front and back, and a dovecote. Signed: J. Bancio Piemont; Gueydon; Chantalou; Lenormand; Henry, notary.

March 11.

31156. 4499.

1½ pp.

Pontalba furnishes bond for Allain.

Bond furnished by Mr. Joseph Pontalba, Commandant of the Post of Pointe Coupée, for Jean Francois Allain of Sr. Francois Mayheux, for the lease passed before Sr. Trenaunay Chanfret, subdelegate; sum of said lease being 1200 livres per year, which said Pontalba obligates himself to pay without division or discussion, when due. Signed: Pontalba; Rivard; Meuillion; Potin, notary. Document badly stained.

March 11.

31162. 4501.

Nuncupative will of Antoine Joly.

Nuncupative Will of Antoine Joly, Sergeant in the Swiss Regiment of Karrer, made in the house where he lodges, corner of Conty and Bourbon. He is a native of Bedford, in Alsace, a widower, whose first wife died in this Colony, without posterity. He married Francoise Renard secondly, in whose favor his will is made.

Signed: Joly; Nicolas Judice; Vegas; Henry, notary.

March 12.

30901. 5 pp.

Lease of plantation of Widow Gervais, for three years.

Lease of plantation of deceased Widow Gervais, for three years, with the slaves thereon, for the sum of 600 livres, which amount being under value Council orders sale to be repeated on March 19, 1748. Second sale of plantation brought 840 livres, and was adjudicated to Sr. Hugon.

Signed: Lenormand; Hugon; Raguet; Lafreniere.

March 15.

31175. Slip.

Receipt.

Acknowledgment of owing four barrels of corn to M. Chaperon, on the first corn of the crop.

Signed: Tixerant.

March 15.

Petition for meeting to be convened for election of tutor and subrogate tutor.

Petition to M. Le Normant, Commissioner General, Ordonnateur and First Magistrate, by Sr. Raguet, acting as Procureur General, stating that said Sr. Pierre Renaut, called Sr. Laurent, left from a marriage contracted with a savagess a daughter who also died. He has three children, a few slaves and some movables left in care of Sr. Baudreau Graveline, wherefore Sr. Raguet prays that friends, in default of relatives, be assembled to deliberate, as Sr. Graveline is almost eighty and very decrepit. A paper written under private seal begs that two Jesuits be intrusted with the division of these goods. The meeting convened will elect tutor and subrogate tutor, to be charged with what may belong to them. Signed: Raguet.

Order for meeting.

March 16, 1748. Let relatives and friends be assembled before M. Lafreniere. Signed: Lenormand.

March 15.

Vol. 3. 31176.

4503. 2¼ pp.

Acknowledgment of having received from Layssard freres a lot of goods which Elie Vivier, merchant of La Rochelle, promises to sell for them on five per cent commis-

Receipt.

sion. Copy collated with the original, dated September 13, 1744, on demand of Layssard freres, on March 15, 1748.

Signed: Henry, notary.

Procuration to Diederich for collection of above debt.

March 15, 1748. Procuration granted by Layssard freres to Diederich, officer in the Swiss troops, Regiment of Karrer, to collect the value of the aforesaid goods. Filed in the Registry of the Superior Council at New Orleans, and signed: Layssard freres; Chantalou; Lenormand; Henry, notary.

March 16.

31179. E, 4504.

5 pp.

Inventory.

Inventory made on petition of Nicolas Ducret, called Belhumeur, a cobbler of New Orleans, on account of community existing between himself and Marie La Peze, who died childless last September. Inventory signed: adam; poisat; Lenormand; negrier; Henry, notary.

March 16.

31184. 4505.

5 pp.

Marriage contract of Nicolas Ducret and Marie Magdelaine Roy.

Marriage Contract of Nicolas Ducret, called Belhumeur, widower of Marie Jeanne Peze, a native of Conflans, and Marie Magdelaine Roy, minor daughter of Louis Roy and of deceased Marie Marguerite Dumay, a native of Magdelen Prairie, near Montreal, Bishopric of Quebec; Sr. Nicolas Adam and Marie Marguerite Roy, her brother-in-law and sister, stipulating for her.

Signed: Marie maigdelaine roy; G. Cacadier dusigne; adam; poisat; negrier; Chantalou; Lenormand; Henry, notary.

31188.

Marriage contract filed in Registry.

October 1, 1763. Between Marie Magdelaine Roy, widow of deceased Nicolas Ducret, called Belhumeur, residing in New Orleans. Demand of the Procureur General that said marriage contract be filed in the Registry, and so ordered by the Council on the first of October, one thousand seven hundred and sixth-three. Signed: J. J. Abbadie.

March 16.

Vol. 3. 31189.

4506. 2¼ pp.

Procuration to Diederich.

Statement of the note, order and obligation left in Diederich's hands; and procuration granted Sr. Alexis Diederich to collect it, by Jacques Chauvin, merchant of New Orleans.

Signed: Chauvin; Chantalou; Lenormand; Henry, notary.

March 16.

28988. 4 pp.

(Listed 482)

Adjudication of Slaves of succession of Jacques Judice. Petition to Superior Council, by Nicolas Judice, tutor and brother-in-law of his nephew, Louis Judice, stating that inventory has been made of the estate of deceased Jacques Judice, and that it is to the interest of the minor to convert a part of it into money. He therefore begs to have the slaves sold judicially, before the Commissioner of the Council appointed on this cause, in the presence of the Procureur General.

Petition to sell slaves belonging to succession of Jacques Judice.

Petition granted.

March 16, 1748. Consent of the Procureur General. Signed: Fleuriau.

Sale advertised.

March 17, 1748. Advertisement of sale of furniture, slaves, cattle and objects, to take place in the house of the deceased Jacques Judice.

Permit for sale.

March 17, 1748. Consent of the Procureur General. Signed: Fleuriau.

Public notice.

March 19, 1748. Notice to the public. Signed: Lenormand.

28985. 3 pp.

March 28, 1748. Adjudication of slaves of the succession of deceased Jacques Judice. Negroes to be delivered only on bond furnished, to remain in Registry until then, with promise not to hire them to others. Adjudicated to Blanpain for the sum of 1200 livres, on clauses and conditions stipulated.

Adjudication of slaves of Jacques Judice succession.

Signed: blanpain; Lenormand; fleuriau; Raguet; nicolas judice.

Lease of house adjourned for want of bids.

We also put up a house, and no bids having been made, the lease was adjourned, and Nicolas Judice is allowed to rent it for a year. Signed: fleuriau; nicolas judice; Raguet.

28987.

Security.

March 29, 1748. Bond furnished by Sr. Joseph Le Kintrek for said J. Blanpain.

28992.

November 11, 1748. Petition to Superior Council by Nicolas Judice, acting as tutor, to re-lease slaves of Jacques Judice succession hired to Blanpain, in default of payment. Signed; nicolas judice; Cantrelle.

Petition for re-lease of above slaves.

Annulment of above lease.

November 20, 1748. Permission to take back said slaves, and this order to be communicated to the Procureur General. Signed: D'Auberville.

New lease authorized.

November 20, 1748. Considering the reasons stated, the Procureur General consents that lease be annulled and that it be proceeded to a new lease. Signed: fleuriau.

Public notice of annulment of former lease.

November 20, 1748. Notice to the public of the cancellation of lease, served on Sr. Blanpain by Sheriff Lenormand.

Public notice of aucton of slaves.

December 8, 1748. Notice to public that said slaves will be sold judicially next Tuesday, on same conditions, and Sieur Blanpain compelled to pay for six months' lease and the costs of court. Signed: Lenormand.

March 19.
31166. 4502.
1½ pp.
Family meeting to elect tutor.

Family Meeting to elect a tutor to the minor daughter of Madelaine Pany and Pierre Pasquier. Signed: paquet; Chantalou; baudrau; chamilly; Raguet.

Homologation of above election.

March 19, 1748. Order that Sr. Michel Paquier, uncle of said minor, remain her tutor and that said election be homologated before the Court.

Signed: Paquet; Raguet; Lafreniere.

March 20.

31203. 4508. 2 pp.

Contract of apprenticeship.

Contract of Apprenticeship entered into by Louis Langlois, tutor of his nephew, Gerard, minor son of his brother, who is a "creole" of this Colony, who has consented to learn the trade of cabinet-maker under Francois Bigeon, called La Violette, who will furnish board, lodging, and have his clothes laundered, on conditions enumerated, for the space of five years. Signed: Laviolette; gerard.

March 20.

2½ pp.

Petition to charge debt to succession of Pellerin.

Petition to Intendant Le Normant by Francois Caüe, stating that since 1737 he has worked on accounts of deceased Gerard Pellerin, formerly Guardian of the store of the Company of the Indies, for which work is due to him the sum of 11,462 livres, 4 sols, 4 deniers. He, on his side, owes the Company 6462 livres, 4 sols, 4 deniers, on a note of October 27, 1740, to liquidate the succession of deceased Sr. Mirbaise de Villemont, on which was due 12,924 livres, 8 sols, 7 deniers. Mr. Salmon was pleased to reduce it to one half, when in debt to the Company; and as the petitioner is about to leave for France, and is detained only by this debt, he prays that M. de Membrede and M. Du Breuil, tutors of Pellerin's minor children, permit his obligation to be charged to the account of the Pellerin succession, without prejudice to the 5000 livres still due by said succession. Signed: Caüe.

Order to communicate to interested parties.

March 20, 1748. Order to communicate to MM. de Membrede and Du Breuil, and to M. Prevost, Agent of the Company of the Indies. Signed: Lenormant.

Notifications acknowledged.

Held as notified. Signed: Prevost.
Held as notified. Signed: C. Membrede.
Held as notified, referring to justice. Signed: Du Breuil.

Petition of Caüe granted.

March 22, 1748. On Request of Mr. Prevost, Agent of the Company of the Indies, Mr. de Membrede and said Sr. de Caüe, with the consent of those concerned, Pellerin's succession is condemned to discharge Mr. Caüe for the sum of 6462 livres, 4 sols, 4 deniers, on account of balance due by said succession to Mr. Caüe for work done on Mr. Pellerin's accounts.

March 20.

30817. 2 pp.

Contract of apprenticeship.

Contract of Apprenticeship between Jacques Nicolas, gunsmith, and Louis Langlois, tutor of Auguste Langlois, son of his brother, Estienne Langlois, and Catherine Baudreau, to teach his trade to said minor, on conditions stipulated, for five years. Langlois and Nicolas declared that they did not know how to sign. Signed: auguste; Henry, notary.

Document in good condition.

March 21.

Vol. 3. 31205.

4509. 3½ pp.

Procuration for sale of goods.

Partnership between Mr. Lerodec, Ordinary Secretary of the Marine, and Mr. Le Bretton, Chief Secretary of the Marine, for 18 barrels of brown sugar, and other things, amounting to 22 barrels, weighing 13,175 pounds, marked from No. 1 to No. 18, marked by letters "LB", and having embarked it for our account and at our risk, in the King's frigate La Mutine, Sr. Le Bretton grants unlimited procuration to the Royal Secretary of the Marine, to act in this matter as seems suitable to him. Signed: Le Bretton; Chantalou; Lenormand; Henry, notary.

(Note: Sr. Louis Cezard Le Bretton acted as Comptroller of the Marine.)

March 22.

Vol. 3. 31209.

4510. 2 pp.

Declaration by fugitive slaves brought back from Havana.

Declaration by fugitive negroes, Manuel and John, belonging to Mr. de Benac, when brought back from Havana in the King's frigate "La Mégère", commanded by Mr. de Quelin, and remitted to their master at New Orleans, that they saw and spoke to one Suquoy at Havana. He lives near the door in a cabin in a place called Mouraille,

and sells different things. The said Suquoy was married before the Church in Mobile to a woman named Susanna, and has a daughter in New Orleans; the wife he took in Havana is named Catherine, and another who is his neighbor, called Jeanne or Juana. The said Suquoy was carried away by soldiers who deserted from a post named Bayou St. Jean, near New Orleans; and those named La Clef and Marche à Terre, all negroes, (illegible), and Marie, a creole negress of Mobile, belonging to Mr. Tixerant, Officer of the Marine troops of New Orleans; Léveillé and Cupidon, owned by Sr. Aufrere, also of New Orleans. These negroes were taken from Bayou St. Jean on October 12, 1739, and were never heard of, nor the soldiers, until this day. The said negroes moreover declare that they saw and spoke to Marie, negress of Mr. Tixerant, who is married, though married in New Orleans, where lives now her husband Francois; a boy named Charlot; a girl Jeanne; and Babet and her husband in Havana, called André, the carpenter who lives on Campeche street, etc., naming other negroes, some belonging to M. Chaperon.

Signed: Tixerant; and certified by Henry, Greff.

Document badly charred.

March 22.
No. 14. 1 p.

Account of Gerard Pellerin.

Excerpt from account of Sr. Gerard Pellerin, Guardian of the general warehouse of the Company of the Indies, balance settled March 22, 1748, by M. Le Normant, Commissioner General of the Marine and Ordonnateur.

Document perforated, torn, and with worm eaten and stained margins.

March 23.
Vol. 3. 31213.
4512. 1½ pp.

Declaration of the mate, giving reasons for not being able to rejoin his boat.

Declaration by Charles Le Conte, mate under Captain Ferret, reports that on the fourteenth instant, having gone aground on the shallows at the entrance of East Pass at the mouth of the Mississippi, and being greatly in need of succor, the Captain had ordered him to man the long boat with eight men and go to the Balize for the Pilot of the Port; which he did, but the wind having increased and finding himself in the breakers, the waves filling the long boat, and the strength of the current carrying them to the open sea, and unable to reach the Boat, he resolved to make for the nearest isles to bail out their boat, and when they reached land they perceived the Boat making for the sea, with a fire as a signal. The wind and the distance preventing them from reaching it, they remained on the isle until daylight, in the hope that they would cast anchor in the offing. On the fifteenth, not seeing the Boat, and realizing that it was on its

way, he returned to the Balize, bringing back the pilot he had gone to seek, and then went up to New Orleans to seek an occasion to rejoin the Boat at Havana, making this present declaration to serve as need may be. Signed: Ch Le Conte; Henry, Greff.

(Note: The boat he was on appears to have been the "New Orleans".)

Document in good condition.

31215.

Letter addressed to above mate.

March 22, 1748. Letter addressed to Mr. Le Conte, Second Captain of Mr. Ferret's boat, passenger on ship of Mr. Macarty, at New Orleans, inquiring if Mr. Coquille has spoken to him of him; that he will go on board the ship lower than Madam Fazende's plantation. Asks him to tell the negro briefly what he told him, and he will oblige his humble servant, "Bonargues".

March 23.

Vol. 3. 31221.

4515. 2 pp.

Procuration by La Croix to de Mazan.

Procuration granted before Notary Royal by Mr. Daniel Hubert, called La Croix, to Sr. Balthazar Ponfrac de Mazan, Officer in the troops in this Colony, to obtain payment from Sr. Jacques Cartier, in the Isles of Santo Domingo, who owes him 317 piastres, on a note of December 27, 1745, and on his refusal, to enforce payment by all possible legal means.

Signed: Lenormand; Chantalou; Henry, notary.

Document in good condition.

Promissory notes.

Copy of two promissory notes due to Mr. Hubert, called La Croix, (apparently covering above debt.)

March 23.

Vol. 3. 31211.

4511. 2 pp.

Procuration to collect a debt.

Procuration granted before Notary Royal, by Pierre Couilleret, butcher of New Orleans, to Sr. Jean Claude Fabry, to collect from Blaise Blancart the sum of 802 livres, on a note passed before Mr. Rossard, promising to approve all that Fabry may find necessary. Couilleret declares that he does not know how to write, and the document is signed: Lenormand; Chantalou; Henry, notary.

Document in good condition.

March 23.
Vol. 3. 31217.
4513. 1½ pp.
Procuration to collect a debt.

Procuration granted before Notary Royal by Pierre Couilleret, to his sister, Magdelaine Couilleret, to collect from Nicolas Couilleret, his cousin, 27 livres, 10 sols, due on a sale passed before Mr. Bonhomme, Notary Royal, at St. Ries in December, 1739.

Signed: Lenormand; Chantalou; Henry, notary.

March 23.
Vol. 3. 31219.
4514. 2 pp.
Procuration.

Procuration, in blank, by Laurent Cheverly, locksmith, following the letters just received from his cousin, Marguerite Thiebout, announcing the death of his stepmother, Francoise Guyau, widow of Jacques Cheverly, his father, wherefore he gives his power of attorney to represent him and to sign for him all papers and titles, inventories, etc., of the succession of Jacques Cheverly, of Vitry, as well as of Jeanne Morlaix, his deceased mother. He authorizes him to pay debts due by said succession, and to collect those due to said succession, to sell, receipt, to remit to Mr. Hersan, clothier of Paris, the sums due him and to exact valid receipt for same, and to send amount to this Colony, and in case of difficulty on the part of the detainers, to attack legally, said Cheverly promising to approve and ratify all that he may think suitable; this procuration to continue in force until revocation.

Signed: Laurent Cheverly; Chantalou; Lenormand. Henry, notary.

March 24. Slip.
Receipt.

Receipt for 175 livres. Signed: Charles Mell.

March 25.
1 p.
Receipt by de Masan.

Acknowledgment, in the presence of witnesses, by the Chevalier de Masan, that he has received full payment of the account of Mr. Ancellin with Mr. La Brosse. If Mr. Ancellin can prove by Mr. Sevet that he has paid the sum of 300 piastres to Mr. Rasteau or those acting for him, I promise and obligate myself to pay to said Ancellin, the said sum of 300 piastres, as the account has been liquidated for Sr. La Brosse. Done and passed before Jean Baptiste Garic avt., Marin Lenormand, usher and crier. Signed: le chr de masan; Garic present; Lenormand.

Cancelled note. Listed XXX.

March 18, 1748. Cancelled promissory note in favor of Madam de Mazan. Signature appears to be "Plassan". Discharge signed: le chv de Masan.

March 25.

Vol. 3. 31223.

4515. 4 pp.

Partnership agreement.

Partnership entered into by Balthasar Ponfrac de Masan, Lieutenant of a company of Marines; Jean and Estienne Layssard, brothers and merchants of New Orleans; Honoré Olivier; and Denis Macarty, Captain of a ship anchored at the wharf of this City, acting for himself as well as for Jean Vivier and Blavout, merchants of La Rochelle; who have agreed on a treaty of partnership to fit out a fleet of ships. Mr. de Masan contributes 3000 livres; Layssard brothers, 14,000 livres; Sr. Olivier, 6000 livres; Sr. de Macarty, for himself and Sieurs Vivier and Blavout, 6000 livres.

Signed: D. Macarthe; Fr C Olivier; le Chr de Masan; J Layssard; E. Layssard; Chantalou; Lenormand; Henry, notary.

31234.

Annulment of above partnership.

March 30, 1748. Annulment of said partnership. Signed: Layssard freres; D Macarthe; E Layssard; le chr de masan; Fr C. Olivier; Chantalou; Lenormand; Henry, notary.

Document charred and going to pieces.

31225. 4 pp.

Partnership agreement, of which there are three copies.

Partnership between MM. Balthasar de Ponfrac, chevalier de Masan, Jean and Etienne Layssard, merchants of New Orleans, Honoré Olivier, and Denis de Macarty, Captain of the Aurore, anchored in this port, who have agreed to make an armament for Cap Francois, Isle of Santo Domingo; Sr. Denis de Macarty obligating himself to buy, at the Cape, a boat, brigantine or schooner, for his own account as well as that of the partners, and will have it loaded at the Cape with effects suited to this Colony, following the memoranda furnished by the associates for that purpose. He shall engage the crew, and each will contribute his share to the costs. Sr. de Masan 3000 livres, Layssard brothers 14,000 livres, Sr. Olivier 6000 livres, Sr. de Macarty, acting for himself as well as for Srs. Vivier and Blavout, 6000 livres, promising to forward the said sums or a pro rata, which Sr. Macarty will be held to advance in letters of exchange. St. Denis de Macarty is empowered to purchase the boat, the partners obligating themselves to pay him a commission of five per cent, the specie of Santo Domingo being fifty per cent higher than that of France or of this Colony. If Sr. de Macarty has the misfortune to be captured as he leaves in his boat, L'Aurore, the partnership will be null, by the impossibility of Sr. de Macarty to make the advances. Original signed: Augustin Chantalou, Lenormand, witnesses; de Macarty, de Masan, H. Olivier, J. Layssard, E. Layssard, Chantalou, Lenormant. Here signed: Henry, notary.

31228.

Promise to remit.

March 28, 1748. In the interest of MM. Layssard in the intended armament, the sum of 14,000 livres, that of 3000 livres, etc., I shall remit to MM. Layssard in bills of exchange on the General Treasurers of the Marine, as obligated by said act.

Obligation.

March 25, 1748. Good for 3000 livres, as aforesaid. Signed: Chr Macarty.

31229. 2¾ pp.

Duplicate.

Duplicate of document 31225. This copy is signed: Henry, notary.

31231.

Duplicate.

Another copy of document 31225. In fine legible script, unsigned.

March 28.

31236. 4517. 1 p.

Declaration of sailor as to the death of Paul Rasteau.

Declaration of Antoine Pezan, a native of Marseilles, Master of the boat L'Entreprise, Mr. Dupegny captain, at present anchored at New Orleans. On demand of M. Broutin, Captain, Engineer of the King, he testified that he left Florida in a Spanish boat for Havana, on the same boat was a Portuguese Mate named Antoine Grissant, who was in the same boat as M. Rasteau, when he left Carolina for Florida, who said that he only saved himself by swimming. He affirmed that he saw the corpse of Mr. Paul Rasteau on the shore, which the waves had thrown there; that Mr. Antoine remained at Havana, at the post, in order to make this declaration, which was certified as valid throughout, and he signed: Antonio Perralta.

March 29.

3 pp.

Petition for recovery of a debt.

Petition to Superior Council by Nicolas Judice, stating that on March 9th a second judgment in default was rendered against Sieur Blanpain, condemned to pay 550 livres for the hire of five slaves and one negress of the succession of Jacques Judice, which were adjudicated to him at the sum of 1100 livres, payable every six months, wherefore he prays that he be allowed to seize the movables of Blanpain to the amount of 1650 livres, reserving the right to apply to Court to all other means, even bodily apprehension, until debt be paid. Signed: Garic, avt, for petitioner.

Permit to cite.

March 29, 1748. Permit to cite. Signed: D'Auberville.

Notice of citation.

March 29, 1748. Notice of citation served on Blanpain by Sheriff Lenormand.

March 30.

Vol. 3. 31237.

4518. 2 pp.

Procuration.

Procuration granted by Mr. Balthasar de Ponfrac, Chevalier de Mazan, to Sr. Joseph Assailly, merchant at Cap Francois, Santo Domingo, whom he empowers to sue the armament and Sr. Vincent Lepré. The Chevalier de Mazan is the proprietor of the frigate "La Fortune" and he is about to leave in the King's frigate "La Mégère", who is about to pass at the Cape with Mr. Le Normant, Commissioner of the Marine. He has engaged Sr. Lepré Vincent, Captain of La Fortune, to embark on L'Aurore, commanded by Captain Denis Macarty, because he apprehends war. He gives unlimited power to said Assailly. Signed: le Chr de masan; chantalou; Lenormand; Henry, notary.

(To be continued)

INDEX TO THE SPANISH JUDICIAL RECORDS OF LOUISIANA
LXIX.

September-November, 1782.

(Continued from January, 1936, Quarterly)

BY LAURA L. PORTEOUS.
With Marginal Notes by Henry P. Dart, (when not initialed)

Spanish officials appearing in this installment:

Esteban Miro, Colonel of the Fixed Regiment of Infantry of this Place and Governor ad interim of this Province.

Martin Navarro, Intendant General of this Province and of the Royal Treasury.

Alcaldes: Jacinto Panis; Guido Dufossat; Francisco Maria de Reggio (1783); Juan Ventura Morales (1783, 1791); Pedro de Marigny (1792).
Rodriguez (1783); Pedro Pedesclaux (1791).

Escribanos: Leonardo Mazange; Rafael Perdomo; Fernando

Attornies: Francisco Broutin; Antonio Mendez (1791).

Assessors: Juan Doroteo del Postigo; Jose de Ortega (1791); Manuel Serrano (1792).

Doctors: Robert Dow, Physician at the Royal Hospital; Santiago Le Duc, Surgeon at the Charity Hospital; Joseph Montegut, Chief Surgeon of this Place.

Appraisers: Francisco Bijon; Adrien de la Place; Lorenzo Wiltz; Juan Bautista La Coste; Pedro Marchand; Hacil Courcelle.

Nicolas Fromentin, Deputy Sheriff.

Francisco Munoz, Warden of the Royal Prison.

Antonio Mendez, Official Translator.

Luis Liotaud, Official Taxer.

Joseph de Villavasco, Administrator General of Royal Revenues.

Bernardo de Otero, Colonel of the Royal Armies and Paymaster of the Army of this Province, having the functions of fiscal.

Astier (Christian name unknown), Sindico Procurador General.

Alexandro de Clouet, Lieutenant Colonel, Civil and Military Commander of the Posts of Attakapas and Opelousas.

Robert Robin de Logny, Captain and Judge of the Parish of St. Jean Baptiste des Allemands.

September 4, 1782.

Josef Conand vs.
Vicente Moran.

No. 49. 9 pp.

Court of Alcalde
Jacinto Panis.
Assessor, Juan del Postigo.
Escribano, Rafael Perdomo.

To collect a debt.

This suit to collect a debt is of interest to the student of Louisiana law as an illustration of the procedure in such cases.—W.P.

Joseph Conand claims a debt of 500 hard pesos on an obligation, duly presented, signed by Vicente Moran (Chevalier de Morant) and endorsed by Mauricio Canué (Maurice Conway) which he asks to have verified. He further prays to have the obligation which is in French translated into Spanish. Panis, on Postigo's advice, orders the obligation verified.

The next on file is the promissory note signed by Chevalier De Morant by which he agrees to pay Mr. Canué (Conway) 500 piastres next December, as he has received this money from the said gentleman. New Orleans, May 11, 1781. Across the back is written, "pay the sum which is mentioned on the other side to bearer and oblige your very humble servant, Maurice Conway."

Joseph Conand asks for a writ of citation, to be delivered by some minister of justice, because the defendant is on his plantation. Petition granted. The writ is issued and served by Nicolas Fromentin, who reports to the Court that he went to Vicente Moran's plantation situated two leagues from the city, and he intimated to him that he would come to the city in person.

Chevalier De Morant makes his declaration verifying his signature and acknowledging the debt which he agrees to pay on the 11th of the current month. Written just below is a note to the effect that Josef Conand has received 500 pesos from Vicente De Moran which have been exhibited in the Office of Rafael Perdomo, Escribano.

A decree signed by Panis and Postigo reads: Just as soon as the present escribano is informed that Vicente has agreed to pay the costs of these proceedings let Luis Liotaud tax same. He must first be notified so as to accept and take oath. Deliver to Moran the obligation filed on page 2, and at the end of these proceedings place a receipt for same.

Rafael Perdomo signs a receipt to the effect that Josef Conand has returned the obligation in his presence. A marginal note on page 3 states that the note was returned to the party. However, it is never removed from the file.

Costs are taxed by Luis Liotaud at 10 pesos 5 reales on September 13, 1782.

September 4.

Maria Theresa, a slave of Madame Reuso, petitions to be granted her freedom.

No. 23. 25 pp.

Court of Alcalde
Jacinto Panis.
Assessor, Postigo.
Escribano, R. Perdomo.

This suit for the emancipation of a slave is of interest to the student of Louisiana law as illustrating the procedure in such cases; the student of history will find here material on the monetary value of such a domestic servant, as well as the valuation of her monthly services.—W.P.

Maria Theresa, a slave of Madame Ruisseau, (Desruisseau) petitions, saying that she wishes to redeem herself from slavery through legal means. She prays the Court to decree that expert appraisers be appointed to place a value upon her and in case of discord a third be named by this Tribunal. She names for her part Adrien de la Place. She further asks to have her owner warned that if she does not name her appraiser one will be appointed for her officially, and that Alcalde Panis intervene so that Mrs. Desruisseau can not inflict any punishment upon her or have her imprisoned for asking for her freedom. During the time that this suit is pending she agrees to pay, promptly, her day's wages until definitive sentence will be pronounced. Panis, on Postigo's advice, rules to appoint the appraiser this party names and notify Mrs. Desruisseau to name one for her part, then proceed with the acceptation and oath. In the secondary petition: As it is prayed. Adrien de la Place is notified, accepts and qualifies.

Maria Theresa asks for a writ of citation.

Maria Theresa presents a second petition asking for a writ of citation, as her owner lives out on Bayou Saint John. In a secondary petition she asks the Court to settle this suit she has brought and order her release from arrest and also to notify her owner not to embarrass her in this cause. With regard to her agreement to pay her own daily wages, the amount of her indebtedness will be adjusted with the definitive sentence to this suit. Panis, on Postigo's advice rules: Issue the writ so that Mrs. Desruisseau may appear within twenty four hours, with a warning of what will have place in law. As to the secondary petition: As it is prayed.

Release of the prisoner.

Rafael Perdomo sets down that he went to the Royal Prison of this city where he notified Francisco Munoz, the warden, to set free the negress, Maria Theresa, Mrs. Desruisseau's slave, consequent to the decree issued by the Court.

Writ of citation.

The writ of citation is issued and served by Nicolas Fromentin, who reports that he served the writ in person; this is followed by a notification signed by Perdomo that he notified Mr. Milon, Mrs. Desruisseau's son.

Maria Theresa petitions. Maria Theresa again petitions, saying as it appears from the reverse side of page 5, Nicolas Fromentin notified her owner to present herself at the present escribano's office to be informed of a certain decree. She has commissioned her son, Mr. Milon, to go to be instructed in what is provided by the said decree. He was notified in the presence of the judge of this cause to name for his part some person of confidence who would place a value on her. Up to the present he has not complied with the orders of the Court, notwithstanding several days have passed. In consideration of which, may it please this Tribunal to decree that this suit be concluded and that she be permitted to enjoy her freedom which the laws recognize as her right, to say nothing of the pragmatic sanctions of our Sovereign. She prays to have them proceed with the appraiser she has named to place a just price upon her person, with a citation of her owner to comply with these terms. Alcalde Panis, on Postigo's advice, rules: Because Mrs. Desruisseau has not named an appraiser to put a value on her property, Maria Theresa, the Court appoints Mr. La Biolet (Francisco Bijon) officially so that he, with the appointee of the negress, may proceed with her appraisement, and done let their said appraisement be returned to the Court. Francisco Bijon is notified, accepts and qualifies. He and Adrien de la Place estimate the slave at 500 pesos, because she is a good seamstress, washer and ironer.

Maria Theresa again petitions. The plaintiff again petitions, saying as it appears from the proceedings on page 8 she has been estimated at 500 pesos, this amount she has promptly exhibited before the Escribano so that he can certify to it and count it out for delivery, therefore may it please the Court to decree that her owner draw up for her the corresponding act of emancipation and she will promptly pay all just and due fees, besides costs. Panis, on Postigo's advice, rules: He orders and does order the corresponding act of emancipation drawn up before the present Escribano.

Mrs. Desruisseau answers. Maria Francisca Gerardy, widow of Joseph Desruisseau, answers, saying they have proceeded officially and without her participation to appraise her negress, Maria Theresa, aged 43 years, although she had presented herself in due time as she can prove from documents in her possession. This appraisement is gravely prejudicial to her, therefore she asks the Court to revoke or amend it, and for this purpose order the records of the case delivered to her so that she may enforce her rights. Panis, on Postigo's advice, decrees: Petition denied as this party prays; let the estimation made of the negress, named Maria Theresa, have full and due effect and let the defendant's claim be excluded, because it lacks truth as the records show.

Maria Theresa again petitions.

The plaintiff says that up to the present her freedom has not been granted to her, although it was ordered in the last decree, because her owner has not come to the city to authorize the act. However, in order to have the document drawn up, she asks to have Luis Lioteau notified of the foresaid decree so that in accordance with it he may tax costs, since she has exhibited the 500 pesos, the just price for her emancipation, before the present Escribano. Therefore may it please the Court to have this proceeding concluded and to order a writ of citation issued with a warning of the consequences if the decree is not obeyed. Panis, on Postigo's advice, rules: Let some minister of justice cause Francisca Gerardy Desruisseau to appear within twenty four hours, so that she may draw up the act of emancipation before the present Escribano, freeing her negress, Maria Theresa. Let the costs be taxed by Luis Lioteau, who must first comply with the formalities of acceptation and oath.

Mrs. Desruisseau answers.

Francisca Gerardy, widow of Joseph Desruisseau, answers saying that she has been notified of a decree ordering her to name an appraiser to place a value on her slave, who is claiming her freedom. In order to comply with this decree she appoints Lorenzo Wiltz; may it please the Court to accept him so that he may be notified for his acceptation and oath. She asks Alcalde Panis to take into consideration that her slave is one of the most perfect servants in this Province, a good washer and ironer, also a seamstress and embroiderer, as well as an excellent cook, in a word she has all the talents proper for a house domestic. It has cost her much to teach her. This information she presents to the Court so that the appraisement may be made. In a secondary petition, she says, considering her negress has been a fugitive since May 1, 1781, up to the present, may it please the Court to order them to estimate the value of her wages during the time she was away and condemn her to pay in accordance with the prices fixed. Panis, on Postigo's advice, decrees: Let the appraiser this party presents be appointed, and let them proceed with the estimation of the negress before the present Escribano. Mr. Wiltz must first accept and take oath in due form. As to the secondary petition, the Court will rule in its own time.

The new appraisement.

Lorenzo Wiltz is notified and qualifies. He, together with Adrien de la Place, proceeds to value Maria Theresa, the former at 900 pesos, the latter at 500 pesos, considering her age, which is between 48 and 50.

Naming the third in discord.

Maria Theresa petitions, saying that at the instance of her owner, Lorenzo Wiltz has been named appraiser, together with

Adrien de la Place, whom she has already named. The two do not agree, Wiltz estimates her at 900 pesos, without taking into consideration the 25 years she has been in the service of her owner, nor her advanced age, 50 years. Mr. de la Place considers her worth only 500 pesos. Therefore she asks the Court to name a third in discord, so that an appraisement may be made of her in conformity to justice. Panis, on Postigo's advice, decrees: Because of discord in estimating the negress, Maria Theresa, between the experts named, let Juan Bautista La Coste be appointed as a third, who must first accept and take oath in conformity to law.

J. B. La Coste's appraisement.

Juan B. La Coste accepts and qualifies. He appraises the slave at 600 pesos. Maria Theresa then petitions, saying that in accordance with the estimation made of her by Juan B. La Coste, she is worth 600 pesos and in consideration that she has exhibited this amount before the present Escribano, she asks the Court to order the necessary instrument drawn up, granting her her freedom, in the same terms as were previously provided. In the secondary petition, her owner asks to be paid her day's wages for the sixteen months she was a fugitive. This claim is put forward only to prevent her from gaining her liberty, which is her right to ask according to law and the Royal Ordinances of the Sovereign. She prays to have this further claim ruled out. Panis, on Postigo's advice, decrees: Considering the estimation made by the third named in discord, of the negress, Maria Theresa, belonging to Mrs. Desruisseau, let the necessary act of emancipation be drawn up by her owner, in the office of the present Escribano, where the slave must exhibit, for payment, the amount at which she has been valued. She must also settle with her owner for the 16 months she has been a fugitive, at the rate of 7 pesos a month. Let the costs be taxed by Luis Lioteau, who must first be notified so as to accept and take oath. Luis Lioteau qualifies and taxes the costs at 37 pesos 5 reales.

September 6.

Criminal Proceedings brought by Francisco Broutin against the free mulatto, Joseph Touton, for wounding his slave Francisco.

No. 50. 34 pp.

Court of Alcalde Jacinto Panis. Assessor, Juan Doroteo Postigo.

The record opens with a statement by Francisco Broutin, presented in the form of a petition, which is to the effect that the day before, the 5th of the current month, at 8 o'clock at night, the free mulatto, Joseph, son of Margarita Touton, met his negro, Francisco, on the street, in front of Francisco Cheval's house, as he was going home and asked him if he would carry a package to his uncle on the Bayou for 2 reales. To this request the slave

Escribano, Rafael Perdomo.

This suit for damages against a free negro who has injured a slave is of interest to the student of Louisiana law as illustrating the procedure in such cases; it contains valuable material for the historian as to the value placed on the daily services of a slave, the charges made by a physician for calls, for consultations, and for bleeding, as well as for the kinds of medicine administered to the patient.—W.P.

answered no, because he had had sufficient work for the day. Then the mulatto without fear of God, or the justice administered by this Tribunal, without another word struck his negro in the stomach and chest with the butt of his gun in such a way as to make him sick and he is now in danger of dying. Joseph says it will give him much pleasure if he does die. Therefore Broutin complains against him and asks to have him sent to prison so that he may not go with his detachment and in this way avoid appearing in Court. In order to prepare his civil and criminal case against the mulatto, may it please the Court to receive the testimony of Martin Braquier, Mr. Bertrand and his wife, Mrs. Bornie, Mrs. Bertrand's niece, the negress named Helena Amelo, all residents of the place where his negro was struck. He further asks to have Josef Villabaso's Marion summoned, because she was a witness to the mulatto's attempt to kill his negro in the public street, and any other residents whose testimony might throw light on the crime, and if sufficient proof of Joseph's guilt results, issue an order for his imprisonment together with a seizure of all his property, and done deliver the summary investigation to him so that he may prosecute his suit. In a secondary petition he states, considering his slave's illness may it please the Court to order Dr. Robert Dow to visit him so as to examine the condition of his body from the blows he has received and make his declaration in due form. Panis orders this representation sent to Juan Doroteo del Postigo, the Auditor of War and Assessor General, so that he may consult him as to what is legal before rendering the corresponding decree. On Postigo's advice, he rules: Admit for this party the information he offers, and done let all be returned to the Court. In the secondary petition, as it is prayed.

Testimony of the witnesses.

Martin Braquier testifies that while he was in his home he heard a noise in the street and upon going out he saw Joseph beating a negro whom he did not know, with the butt of his gun; he made inquiries as to what had caused the trouble between the mulatto and the negro and was told it was because the latter would not take a package to Bayou St. John for 2 reales. He heard Joseph say the negro could not free himself from the blows he gave him because he was not armed, and he, Braquier, understood that if they had not been separated by the free negro, Noel, Joseph's uncle, Francisco would have received much greater injuries than he did.

Dr. Dow makes an examination.

Dr. Roberto Dow, Physician at the Royal Hospital is notified to make an examination. His evidence reads: He went immediately to Francisco Broutin's house to examine his slave, Francisco, who had been maltreated by the free mulatto, Joseph Forastal (Forstall), and having examined him attentively he says that he can and must certify that he found Francisco with labored breathing because of a blow he received in the chest which seems to have come from a blow given with the butt of a gun which has laid open the vital cavity, so that even if it did not cause death it could give the patient an illness that would prevent him from working, principally if there was a return of the attacks of blood vomiting.

The testimony of other witnesses.

Thomas Beltran, Mrs. Amelot's Elena and Mr. Villavaso's Maria give the same testimony as Martin Braquier, with the exception that the negresses add that the negro said he would complain to his master who would take vengeance on Joseph for the way he had been treated, but the mulatto answered that if they would put him in prison he would be liberated so as to go with his detachment.

Alcalde Panis renders a decision.

Jacinto Panis, on Postigo's advice, rules: Having examined these proceedings, he finds Joseph Touton guilty of the crime charged against him, therefore he orders him arrested and held securely in the prison of this city; this imprisonment must be entrusted to the warden. All his property must be seized and placed in the depository. He authorizes this in due form for which let a writ be issued. A marginal note stipulates the writ of arrest that was provided in the foregoing decree has been issued. The writ directs the Sheriff of this city, or his Deputy, to arrest Joseph Forstall, a free mulatto, and let him be put in the public prison in charge of the warden, let all his property be sequestered and this placed with the General Receiver. Nicolas Fromentin, Deputy Sheriff, reports to the Escribano that in fulfillment of the writ of arrest he put Joseph Forstall, a free mulatto, in prison, in charge of the warden. This is followed by the proceedings for seizure, to which Rafael Perdomo signs to the effect that Alcalde Panis and Nicolas Fromentin accompanied him to make a seizure of Joseph Forstall's property, and having inspected his room they did not find anything in it to seize.

Broutin asks to have the prisoner's declaration taken.

Francisco Broutin petitions the Court to receive Joseph's declaration, in accordance with his first request, when he asked to summon witnesses to give their testimony, and done deliver it to him to use for his right. Panis, on Postigo's advice, orders Joseph Forstall's declaration taken.

When the regulation questions are put to the prisoner, namely, his name, where born, state, age and occupation? He answers, he is called Josef Forstall, born in this colony, aged twenty three. At this point the Court ordered the proceedings suspended because the prisoner is a minor. He must be notified to name a curator to assist at his defense. He did not sign because he does not know how to write.

Proceedings to name a curator.

The Escribano notified Josef Forstall, and he in turn names Pedro Bertoniere his curator. Panis orders Bertoniere notified so that he may accept, take oath and give bond. Pedro Bertoniere accepts and qualifies as curator ad lites for Josef Forstall, a free mulatto, naming Antonio Mendes as his bondsman. These requirements having been fulfilled Panis approves, signing the act appointing the curator. They then proceed to question the prisoner where they left off when it was discovered that he is a minor.

Questioning the prisoner.

To the first question he answers that his name is Josef Forstall, a native of this city, aged as he has already declared, he is a bachelor and his occupation is that of a dealer in provisions.

Who arrested him, on whose order, and for what cause? He said he was arrested by Nicolas Fromentin, on Alcalde Jacinto Panis' order; he does not know why he was imprisoned.

Why does he say he does not know the cause of his imprisonment, when in the summary investigation it appears that it was because he struck Mr. Broutin's slave several blows with the butt of his gun which were enough to kill him? It is true that he struck him in the stomach with the butt of his gun and although he gave him two other blows it was with his hand. At this time the free mulatto, Gabriel La Fite, arrived, who saw the negro aim a blow at the declarer, so as to seize the gun with his two hands, then let go of it and reprimanded him, ordering him to go away, to which the negro answered he was in the street and would not go. For this reason, and so as not to have anything more pass between them he left, not considering that the negro was in any danger of death from the blow.

Questioned what reason had he for beating Francisco, when according to the summary investigation he did not give him any occasion for it? He said he struck him only once, and it was because he passed in front of the door of the house and seemed to be listening and investigating what the mulattoes and free negroes were doing within, who had assembled there to go on an expedition for the service. The witness told him to follow his own road because there was nothing for him to see, or hear, or do in that place, and he answered he would not and that he had not the authority to throw him out of it.

Questioned if he did not know that it is a great crime to take the satisfaction of his grievances into his own hands, when he could make a complaint to the negro's owner if he had given reason for it, and that the laws have established grave penalties for those who break them? He answered that he knew very well the penalties the laws have established for such cases, but his anger did not give him time for due reflection upon the affair. At this point the Alcalde ordered the taking of the confession suspended, to be continued whenever convenient and having read it to him word for word he said it was well and faithfully written and that he affirmed and ratified it.

Broutin asks to seize the mulatto's property.

Broutin petitions, saying that it was ordered to seize all the property belonging to Joseph, the free mulatto, and in consideration that he has hidden everything, and particularly his negress, named Sali, and her son aged 4 years, he prays that the Escribanos of this city be ordered not to execute any act of sale for the negress, nor for any of Josef's property. Panis, on Postigo's advice, rules: As it is prayed.

Pedro Bertoniere petitions.

Pedro Bertoniere, as curator ad lites for the free mulatto who is being prosecuted by Francisco Broutin for maltreating his slave, sets forth that his client's confession has been taken and as in consideration of it he does not merit corporal punishment, may it please the Court to order his release from arrest, under bond, which will be executed to its entire satisfaction. Panis, on Postigo's advice, rules: Let Dr. Robert Dow certify to Francisco's physical condition.

Dr. Dow's report.

Dr. Dow, of the Royal Hospital, certifies that he went to Mr. Broutin's house to examine his negro slave, and having looked over him carefully as to his state of health and intelligence he found that when he touched his chest he felt it, which caused him great pain although it was not inflamed as on the first day he examined him. He made further investigation, asking him if he slept at night and if the pain gives him fever and if he has any temperature at present and if the pain in his chest caused him to moan all night. Those who waited on him informed the Doctor that he had a little fever from this time until one o'clock at night, but when he visited him, which was about eight o'clock, he did not find him feverish and although he felt these symptoms he did not think he would die from this cause, but it prolonged his illness and retarded the cure.

Francisco Broutin asks for a consultation.

Francisco Broutin petitions, saying that Dr. Robert Dow, of the Royal Hospital, has examined his negro and has found him ill with a pain in his chest from the blows he has received. Therefore, in order to make it clear to

this Tribunal that there is no malice, nor animosity on his part to hold the mulatto prisoner, nor to cause further costs by continuing the prosecution against him, but only to assure himself of the full value of his slave in case of his death, for this reason alone he prays the Court for a consultation of surgeons, whom Alcalde Panis will name to visit his slave, with the Doctor who has treated him since the beginning of his illness. These Doctors will certify to the seriousness of his trouble and the condition in which they find him on the day of their visit, and done deliver their certification to him so that he may answer upon Francisco's infirmity in fixing the amount of the bond Joseph has offered to give for the outcome of the negro's illness. Jacinto Panis, on Postigo's advice, decrees: Let Drs. Joseph Montegut and Santiago Le Duc examine Francisco, Mr. Broutin's slave, in consultation with the Doctor who has treated him, let this said examination be verified and let them certify to it at the end of their written opinion, and done let all be returned to the Court.

Dr. Le Duc's certification.

Dr. Santiago Le Duc, Surgeon of the Charity Hospital, certifies that he went to Francisco Broutin's house to examine his slave for blows he is said to have received from Josef Forstall, a free mulatto. He found the negro wrapped up in some blankets, a cloak made of sails from a ship and various other furnishings, placed immediately before the chimney in which there was a big fire on a day when great heat was experienced. He looked at his tongue which he found natural, felt his pulse which he noted was disturbed because of the fire and the blankets with which he was wrapped. The negro told him he continued to feel a pain in his chest if he touched it with his hand. He looked to see if there was any inflammation but did not find any, nor other signs indicating an abscess, and according to his knowledge he is of the opinion that he does not show any signs of illness.

Dr. Robert Dow certifies.

Dr. Dow certifies that he went to Mr. Broutin's house to examine his slave for the blows he is said to have received from Josef Forstall. He looked at the negro and found him in good condition, his tongue without any symptoms of illness, his pulse regular though a little disturbed, this he thinks was because the negro was close to the chimney where there was a big fire.

Dr. Montegut too busy to attend the consultation.

Mr. Broutin petitions, saying that Joseph Montegut, Surgeon, was ordered to visit his slave with Doctors Le Duc and Dow, but he has been notified that Doctor Montegut can not take part in the consultation because of his many occupations. He prays the Court to consider Dr. Le Duc's visit sufficient so that he can give an answer as to the state of

his negro's health, in order to conclude these proceedings. Panis, on Postigo's advice, rules to have the certifications of Drs. Le Duc and Dow brought to the Court.

Jacinto Panis renders a decision.

Later Alcalde Panis, on Postigo's advice, decrees: Let Josef Touton give bond for his person, to the satisfaction of the present Escribano, in case his re-arrest should be necessary, and as the Law requires, and let him be released from prison, where he is now held.

The Bond.

A certified copy of the bond to release from imprisonment, dated October 4, 1782, which is a Notarial Act drawn up before Rafael Perdomo, to the effect that Francisco Dervill, a free brown, resident of this city, known to the undersigned Notary and witnesses, offers to go security for Jose Touton, also a free brown, who is under arrest and held in the public prison because of a criminal offense against Francisco Broutin of this city, for beating his slave. In event that Joseph will be called again before the Court, he will appear, and if he fails to do so, his bondsman will pay the amount that will be judged sufficient by the Court, for the security of which he pledges his person and property.

Broutin asks to be reimbursed.

Francisco Broutin sets forth that considering the accused has given bond for the outcome of his slave's illness, may it please the Court to order the mulatto to pay him 30 pesos, the equivalent of the day's work of his negro while he was ill and for other expenses as appears from the documents he duly presents. He also asks to have his opponent pay the Doctor for the treatment and medicines he has administered. He prays leave to present two documents, the first is a receipt signed by Nicolas Fromentin for 4 pesos paid by Francisco Broutin for the three soldiers who arrested the free mulatto with the undersigned Deputy Sheriff. Under this receipt is written, in Spanish in Jacinto Panis' script, a few lines the translation of which reads: "Soldiers when they bestow favors and assist Justice must not take any stipend because it incumbers the former in his profession, for thus it is ordered by His Majesty in his Royal Ordinances." The second document is a bill for 30 pesos. The first item is to the effect that Joseph Navarro,* a free mulatto, owes him for 26 day's wages for his negro, Francis, at the rate of 6 reales a day, or 19 pesos 4 reales. Item for broth and other food during his illness 6 pesos 4 reales and 4 pesos paid the soldiers. Panis, on Postigo's advice, decrees that he must condemn and does condemn Joseph Touton to pay Francisco Broutin 26 pesos. He must also pay Dr. Dow for the visits he has paid and the medicines pre-

(*Note: The accused appears under his mother's name of Toutan, and his own, Forstall. Why Francisco Broutin should call him "Joseph Navarro" is never explained.—L.L.P.)

scribed. He fines him 10 pesos applicable to the fines forfeited to the Treasury, charges for Justice, for the costs of these proceedings and for this decree. Thus he provides orders and signs. Fees 1½ pesos.

Dr. Robert Dow presents his bill.

Dr. Roberto Dow petitions, saying that he has been notified of the last decree pronounced in this cause. May it please the Court to order Forstall to pay for his visits and the medicine furnished the negro, Francisco, according to the bill he duly presents. Petition granted. The bill amounts to 9 pesos. He charges at the rate of 4 reales a visit. Dr. Dow paid 6 single visits and one in consultation with Dr. Le Duc. He bled the negro twice at the rate of 4 reales each time. The rest of the amount due is for medicines such as camphor, balsamics, spermaceti and salts of nitre.

Costs are taxed by Luis Liotaud at 58 pesos 7 reales.

September 11.

Succession of Catalina Laurandine, wife of Henrique Roche. Inventory and appraisement of her estate.

No. 3432. 74 pp.

Courts of Alcaldes,
Jacinto Panis and
Juan Ventura Morales.
Assessor, Jose de Ortega.
Escribanos, L. Mazange and
Pedro Pedesclaux.

This case is interesting as illustrating the procedure followed in the settlement of a succession, as well as for the special provisions of the will of the deceased, and for the unusual circumstance that the succession was reopened after a lapse of nine years.—W.P.

This record is opened by Jacinto Panis with the official announcement of the death of Catharina Laurandine, wife, by her second marriage, of Enrique Roche. She has left children by both marriages, and in order to secure the property she has left, the Alcalde draws up this act to begin these proceedings. He commissions the Escribano to collect the keys. Leonardo Mazange certifies to Mrs. Roche's death, and receives the keys from her husband. The Court orders the will presented, which was executed by Notary Mazange.

The Will.

The certified copy of the will, dated August 26, 1782, reads in part: That the testator is a native of Biloxi and was married twice. By her first marriage she was the wife of Pedro Couilleret. The children born to them were Maria Catalina, widow of (Antonio) Catoire; Lucia, married to Ba. Laurandine; and Catalina Couilleret, wife of Nicolas Lauve. All three have received their part of their legitimate paternal inheritance. About twenty six years before, she contracted a second marriage with Henrique Roche. From this union she has Henrieta, wife of

Arnaldo Magnon, and Elizabeth Roche, widow of Juan Lafitte. When she contracted her second marriage, her husband was a widower, his first wife having been Catalina Luisa Bertaud. One son, Andres Roche, was born of this marriage, who is living at present and has already received the part that should come to him from his mother's estate. When she married Enrique Roche, their contract was drawn up before Chantalou, Notary, dated February 25, 1756, and by this instrument what her husband brought to the community is clearly set forth. She then proceeds to enumerate the property acquired during their married life. First, a house built on a lot measuring 60 feet front by 120 deep at the corner of St. Louis and Bourbon, adjoining Joseph Angelin on one side and one called Manuel on the other. She gives a list of the pieces of furniture she and her husband have bought together. Besides her house furnishings, she sets down her debts and obligations. She mentions some household effects which she says belong to her daughter, Elizabeth Roche, widow Lafitte; these she orders her testamentary executor to return to her. She wills one-fifth of her estate to her husband, after deducting her funeral expenses. She names her husband her testamentary executor, who must sell enough of her estate to pay for her funeral. The rest of her property she leaves to her five daughters, Maria Catalina, Lucia, Catalina Couilleret, and Henrieta and Elizabeth Roche. She revokes all other wills, codicils, procurations or dispositions to will that she may have made before, either by word of mouth or in writing. Panis orders this will sent to Henrique Roche, so that he may promote what is suitable.

Petition to make the inventory.

Henrique Roche asks to make an inventory and appraisement of his wife's estate. He names Francisco Bijon, as appraiser, for his part, who must be notified to qualify. He further asks that the other interested parties name their appraisers within one day, with a warning that if they do not do so one will be named for them. Panis rules accordingly. Francisco Bijon accepts and takes oath to act as appraiser. In attempting to notify B. Laurandine, the Escribano reports that he is in Mobile.

Nicolas Lauve asks to name his appraiser.

Nicolas Lauve, as husband of Catalina Couilleret, states that he was notified of a decree ordering the heirs of the deceased Catalina Laurandine to name an appraiser, each one for his part, so as to proceed with the inventory and valuation of the property. For this purpose he names Pedro Marchand. Panis rejects this petition and orders it returned to the maker to be remodeled.

Catalina Catoire appoints her appraiser.

Catalina Couilleret, widow of Antonio Catoire, petitions, asking to name Hacil Courcelle as appraiser for her mother's estate.

She further states that her many occupations will not permit her to take part in the making of the inventory and appraisement, therefore she asks to appoint her brother-in-law, Nicolas Lauve, to act for her. She prays the Court to accept him as her agent, because her deplorable state of poverty does not permit her to grant a power of attorney before a notary. Both petitions are granted by Jacinto Panis.

Mr. Roche complains that the heirs are retarding the proceedings.

Enrique Roche sets forth, that although the co-heirs of his deceased wife had been notified to appoint a defender to prosecute this cause, they have not done so, which is retarding this proceeding and is greatly prejudicial to him. Therefore he asks that they proceed immediately with the inventory and valuation of the estate left by his late wife, naming the public appraisers to act. Panis rules: Proceed with the inventory and valuation of the estate left by Catalina Laurandine, let the public experts act, as petitioned, and in order to have some one represent the interests of Lucia Laurandine, His Honor says, he must name and does name Francisco Broutin to this office, who must be notified for his acceptation and oath. The other parties, either for themselves or by procuration, must be represented as the law requires.

Broutin qualifies.

Francisco Broutin is notified, accepts and takes oath to act as defender of Lucia Laurandine. Adrien de la Place qualifies as appraiser. Broutin, acting as attorney for Arnaldo Magnon, husband of Henriqueta Roche, and Elizabeth Roche Lafitte, in their name, asks the Court to be appointed to defend Cecilia (Lucia) Laurandine, absent, as her rights are the same as his clients, who have already appointed him to represent them until the definitive sentence is pronounced. Petition granted. Broutin then, in the name of Cecilia (Lucia) Laurandine, asks to have a day set aside for the taking of the inventory. Alcalde Panis sets aside the following day, the 24th of the current month (September).

The inventory and appraisement.

The inventory and appraisement is made in the presence of Jacinto Panis, Francisco Broutin, defender named for Lucia Laurandine, absent in Mobile, and attorney appointed for Enriqueta and Elizabeth Roche, and Nicolas Lauve, acting for his wife, Catalina Couillerat, and his sister-in-law, Maria Catalina Couilleret, Widow Catoire, Enrique Roche, widower of the deceased, and the appraisers, Francisco Bijon and Adrien de la Place. The estate consists of house furnishings, wearing apparel, kitchen utensils and articles in the shoemaker's shop, including chairs, a whet stone, with its handle, three dozen forms, three shoe knives, five pincers, one pair of scissors, slaves, papers, etc. Among the papers is a certified copy of the act of sale of the

house on the corner of St. Louis and Bourbon, acquired from the Nicolas Piery estate, measuring 60 feet 8½ inches front on Bourbon by 119 feet deep. This was sold to Enrique Roche for 801 pesos, on January 15, 1781, before Andres Almonester y Roxas. The survey of the same lot was made by Carlos Trudeau, September 14, 1781. There are various receipts, and an act of sale passed before Augustin Chantalou of a lot of ground on Royal Street adjoining Joseph Ducros on one side and Juan Reynaud on the other, measuring 45 feet front by 72 deep, which Alexo Carlier sold to Henrique Roche, on October 5, 1751, promissory notes, etc., and the marriage contract between Pedro Couilleret and Catalina Laurandine, drawn up in Mobile before Henrique Dubourgdieu, dated January 18, 1735.

Executor declares deceased left no other property.

The inventory completed, Francisco Broutin asks to have Enrique Roche declare under oath if his wife left any property other than what has been inventoried. Panis rules accordingly. Enrique Roche signs a declaration that he has no knowledge of any other effects belonging to the estate besides what has been inventoried, but if anything else should be discovered he will bring the article, or articles, before this Tribunal so they may be inventoried.

Petition to have the inventory approved.

Broutin then asks to have the inventory approved and all interested parties ordered to abide by it. Panis orders this request sent to the others. They fail to answer, so Broutin asks to have them declared in default. Finally Nicolas Lauve and Henrique Roche both answer, asking to have the inventory approved. Panis rules: With the consent of all interested parties he approves and does approve the inventory and appraisement made of the estate left by Catalina Couilleret, and in consequence condemns and does condemn the parties to abide by it.

Petition to sell the estate.

Broutin then asks for an order to sell the estate, after the public calls are made as the law requires. Petition granted. The two public calls are made October 17th and 21st. Enrique Roche petitions, saying that Francisco Broutin has asked for the sale of the property belonging to his wife's succession. This sale will be very prejudicial to him because of the rights he holds in it. Therefore he protests against and opposes the sale in due form, and in consequence asks to have the proceedings suspended and to deliver the records of the case to him so that he may claim his rights. Alcalde Panis orders this petition sent to the other interested parties. This is followed by the third public call for the sale, dated October 25th.

Taxation of costs.

Broutin asks for a taxation of costs of the case to be paid by Enrique Roche. Panis rules: As it is prayed, by the public

taxer, who must first be notified so as to accept and take oath in due form. Luis Liotaud qualifies and taxes costs at 95 pesos 2 reales.

Case resumed after a lapse of nine years.

Nine years later, or on December 6, 1791, Pedro Aubry petitions, saying it is convenient to his right that it please the Court to deliver to him the records of the succession of Catalina Laurandine, wife by her second marriage of Henrique Roche, his father-in-law, who died in 1782. Juan Ventura Morales, on Jose de Ortega's advice, rules: Deliver the records to this party, who asks for them.

Aubry makes a second petition.

Pedro Aubry makes a second petition, stating that he is the husband of Isabel Roche (Elizabeth Roche, Widow of Juan Lafitte), and that it is convenient to his right to have the present Escribano add to these proceedings a certified copy of the marriage contract between Enrique Roche and Catarina Laurandine, dated February 25, 1756, and done deliver the records to him so that he may carry on the necessary proceedings. Petition granted.

The marriage contract.

The marriage contract, dated February 25, 1756, V°. 16. between Henry Roche, called Bellair, and Catherine Laurandine. This is followed by an inventory made of Enrique Roche's property, February 24, 1756, so as to settle with his son by his first marriage before contracting his second.

Pedro Aubry asked to settle costs.

On June 22, 1792, Pedro Pedesclaux petitions, saying that Pedro Aubry brought some proceedings at the end of the suit to settle the succession of Catalina Laurandine by representation of his wife. Considering much time has passed and he has not paid costs, he prays the Court to order them taxed and paid by Aubry. Senior Alcalde Pedro de Marigny, on Manuel Serrano's advice, rules: As it is prayed, from page 62, inclusive. Let the taxation be made by Luis Liotaud, who must first be notified to accept and take oath. Liotaud qualifies and taxes last costs at 7 pesos 7 reales.

September 12.

Pedro Favrot vs. The Succession of Antonio Churiac.

No. 56. 6 pp.

Court of Alcalde Jacinto Panis. Assessor, Postigo.

Pedro Favrot, Captain of the Regiment of Infantry of this place, sets forth that the late Antonio Chouriac was indebted to him for 956 pesos, the remainder of 4600 pesos, the price of a house sold to him on March 27, 1782, before Andres Almonester, Notary Public. He prays the

Escribano, R. Perdomo.

To collect the vendor's lien.

This case is interesting to the student of Louisiana law for the procedure employed in enforcing the vendor's lien against the property of a deceased person under the Spanish system.—W.P.

Court to order the Escribano to certify to what he has just said, and if the result conforms to render a decision accordingly, so that he may be paid from the property left by Churiac, protesting, in case there is nothing with which to pay him, so that he may take executive action against his farm. This action he will reserve for such time as may be suitable. Panis, on Postigo's advice, rules: Let the present Escribano testify, and done let his declaration be brought to the Court.

Perdomo's declaration.

Rafael Perdomo certifies that in the current registry of this year, on page 174, there is an entry of a sale of real property authorized by Captain Pedro Josef Favrot, in favor of the late Juan Antonio Churiac. It is the transfer of a house on Royal Street sold for 4600 pesos, of this amount he has received 3700 in cash, the remainder, or 900 pesos to complete the 4600 pesos, the purchase price of the house, has been ceded in the said document, by Pedro Favrot to Juan Surirai, who would receive the full amount in the month of August of the same year, the late Antonio Chouriac obligating himself to pay Juan Surirai in August as stipulated. This agreement is signed by Mr. Chouriac only, and not by the vendor nor the acceptor, who will receive the 900 pesos.

Mr. Favrot asks for a certification that the debt has been paid.

Nothing further is done until January 16, 1783, when Pedro Favrot presents a petition setting forth that Mr. Suriray has been paid the 900 pesos in cash and has acknowledged receipt of it before the Governor and the present Escribano, therefore may it please the Court to order the latter to certify to this end and if the result conforms to what he has explained, let the 900 pesos still due on the house be delivered to him, under bond which he will promptly execute until such time as the widow can verify the liquidation of accounts and separate his funds from the money belonging to the Royal Treasury that was in her husband's possession. Morales rules: Let the present Escribano certify as petitioned, and done a decision will be rendered.

Rafael Perdomo certifies.

Rafael Perdomo certifies that in the Court of the Governor before him, as clerk, in verbal session held between Pedro Favrot and Juan Suriray, the former claiming that the latter must give bond for the payment he has made of the 900 pesos which he acknowledges to have received. His Excellency disposed that

Suriray draw up the receipt Favrot claims, and that what has been previously made confidentially by Suriray be cancelled, so that it can be accredited when suitable.

Alcalde Morales' decision.

Juan Ventura Morales then decrees: Whereas, attentive to the foregoing certification, let Pedro Favrot give the bond he has offered in his foregoing petition and let the present Escribano in whose possession there exists the 1000 and some pesos belonging to Antonio Chouriac's estate, and let the 900 pesos be paid under the corresponding receipt, which must be placed at the end of these proceedings. A marginal note, signed by Perdomo, stipulates that the bond has been drawn up as ordered in the foregoing decree. Pedro Favrot, signing himself "Pedro de Favrot", gives a receipt for 900 pesos. This ends the proceedings.

September 13.

Executory Process.

Alejos Fernandez vs. Bernardo Aponte.

No. 43. 9 pp.

Court of Alcalde
Jacinto Panis.
Assessor, Postigo.
Escribano, R. Perdomo.

This suit, involving an executory process to collect a debt contracted for a bill of goods sold by a resident of New Orleans to a resident of the Attakapas region, is interesting to the student of Louisiana law for the procedure employed in such a case; the student of history will find in the list of items on the bill to be collected valuable information as to the commercial intercourse between New Orleans and the rural sections of Louisiana at this period.—W.P.

Alexo Fernandez Leal states that it is evident from the obligation duly presented that Bernardo Aponte, resident of New Iberia in Atakapas, owes him 735 pesos for effects, as the bill shows, which should have been paid on the 7th of last January. He has made many efforts to collect, but without success. Therefore, in order to establish executory action against his opponent, he prays to have him ordered to acknowledge his signature and the debt. He further prays that when Mr. Aponte's declaration will have been received it will be delivered to him so as to enable him to take whatever action may be suitable. He states, in consideration of the fact that Bernardo Aponte lives in New Iberia, he asks for a writ of despatch with an enclosure of this petition and its decree together with a certified copy of the bill. Let all be sent to the Commander of the Post so he may proceed to receive the declaration, and if the result conforms to what he has set forth, issue in his favor a writ of execution against Aponte's person and estate for enough to cover the amount of his demand, and give him prompt notice of its fulfillment through the present Escribano. Alcalde Panis sends this petition to Juan del Postigo, his Auditor of War and Assessor General, for his legal advice.

The next entry is the decree signed by Jacinto Panis and Juan del Postigo: Let the corresponding despatch be issued and sent to the Commander of the Post of Atakapas, Alexandro de Clouet, Brevet Lieutenant Colonel, with an enclosure of this written decree and a certified copy of the obligation presented by Alexo Fernandez Leal, so that he may cause Bernardo Aponte to appear before him, and upon the examination of the obligation presented let him declare if the signature at the end is his and to acknowledge the debt to be for the amount cited and if he obligated himself to pay it. And should Bernardo Aponte allege that he can not set forth his defense before the Commander, it is ordered that he present himself before this Tribunal where he will be heard. A marginal note stipulates that the despatch which was ordered has been issued, on 4 sheets of paper, in accordance with the foregoing decree to which he attests. Signed, Perdomo.

The next entry is the obligation, or bill, amounting to 735 pesos and is for the purchase of wine, paper, vinegar, oil. thread, licorice, sugar, jackets, hats, syrup and soap. The debt is acknowledged and the goods receipted for by Bernardo de Aponte, the acknowledgment is witnessed by Josef Garcia and Jose Gomez. This bill is accompanied by a letter addressed to Alexandro de Clouet, Commander at Atakapas and Opelousas, and signed. Aragon. Wherein he states he has received de Clouet's letter by which he was ordered to send Bernardo de Aponte to him. The case that they had entrusted to him (de Clouet) will be decided in the city by Don Esteban Miro. It was by the Governor's command that Aponte was sent to the writer's keeping on the 17th of last June. The reason he is not now in his charge, nor that of the recipient, is because he was transferred immediately to his commander so that the case might be decided in the Capital. "Do not think ill of me for not sending him to you, I could only execute the first orders of my Superior: were you in my place you would have done the same." This letter is dated New Orleans, October 10. 1782.

The remainder of the folio is taken up with a copy of what has gone before, except Aragon's letter, which was despatched to the Commander at Atakapas. Underneath the despatch, in Chevalier De Clouet's writing and signed by him, dated Atakapas, December 15, 1782, evidently referring to Aragon's letter: "Whereas the answer here attached must be sent back to Mr. de Panis' Tribunal."

September 13.

Henrique Darcantel vs.
The Chouriac Succession.

No. 57. 19 pp.

Courts of Alcaldes,
Jacinto Panis and
Francisco M. De Reggio.
Assessor, Postigo.
Escribano, R. Perdomo.

To collect a debt.

This suit to collect a debt contracted by an individual since deceased, is of interest to the student of Louisiana law as illustrating the procedure in such a case, where the government had prior claims on the estate of the deceased, who had been an official at the time of his death and left his obligations to the government unsettled.—W.P.

The first entry is a note for 509 pesos, signed Chouriac, to be paid to bearer, on January 18, 1782. This the plaintiff presents, with a request for payment from the estate left by Antonio Chouriac. Panis, on Postigo's advice, accepts the note and rules that in due time he will render a decree. In a second petition, Henrique Darcantel asks to have the widow, under oath, certify to her husband's signature, and when Mrs. Chouriac's declaration will have been made, let it be delivered to him so that he may bring executory proceedings. Petition granted. Genevieve de Callongne Chouriac, upon sight of the note, declares it is true in all its contents and that the signature is that of her deceased husband, Antonio Chouriac.

Mr. Darcantel asks for a writ of execution.

Henrique Darcantel again petitions, saying that he has received Mrs. Chouriac's declaration by which she verifies her husband's signature, therefore he prays for a writ of execution against all or any of the property left by Chouriac to the extent of the 509 pesos, the one-tenth and costs. Panis rules: Give the records of this case to the Paymaster of the Army, Don Bernardo Otero, so that he may explain what is in conformity, and with his answer let all be returned to the Court.

Bernardo de Otero's answer.

The opinion reads in part: Bernardo de Otero, Paymaster of the Army of this Province, having the functions of fiscal, considering the intestate proceedings taken at the death of Antonio Chouriac and the suit prosecuted against his succession by Henrique Darcantel to collect some pesos, therein asking for a writ of execution in his favor; he says, in fulfillment of his fiscal duty he can by no means consider such a claim until the time that the Royal Treasury will be entirely satisfied and paid the deficit in the funds supposed to be in charge of the said Chouriac, which up to the present can not be discussed, as the accounts, which he has repeatedly demanded, have not been produced. It is upon this accounting that he must base his knowledge for his approval, or disapproval. Panis orders this report sent to the minors' curator.

The curator answers.

Francisco Broutin, curator of the minor children of Antonio Chouriac, answers, saying that notwithstanding the declaration made by Genoveva Decallongne Chouriac, wherein she acknowledges the debt, he can not consent to its payment until the accounts of the funds of the Royal Treasury, that had been placed in Chouriac's charge, have been drawn up and liquidated and all the said Treasury claims paid. The case now passes into the Court of Francisco Maria de Reggio, Alferez Real and Alcalde Ordinario, acting in the absence of Juan Ventura Morales, who orders the above petition sent to Henrique Darcantel.

Mr. Darcantel answers.

The plaintiff answers, setting forth that because the widow has not produced the accounts, as she was ordered to do, has served as a reason for the Paymaster of the Army and the minors' Curator to oppose the payment of his debt. It is not in conformity to law for credit to be retarded any longer because of the negligence of Mrs. Chouriac, therefore he prays the Court to decree that the widow must present the account within a short space of time assigned, without giving place to any other suit. De Reggio rules: The decree of this Audience was executed for Miguel Fortier.

Mr. Darcantel petitions.

Mr. Darcantel again petitions, saying that he has been notified of a decree by which it has pleased the Court to direct that the money, 734 pesos 3 reales, in the keeping of the present Escribano be paid to the Royal Treasury to balance the accounts and make good the deficit which appears against the estate of the late Antonio Chouriac, in accordance with the accounts produced by his widow. In virtue of which, and because the said credit has been satisfied as this Tribunal has decreed, the cause having ceased to exist which embarrassed the payment of the 509 pesos he has demanded, may it please the Court to order the Escribano to pay him from what remains in his possession under the corresponding receipt, which he will promptly draw up. Francisco Maria de Reggio decrees: Whereas and in consideration of what Henrique Darcantel has represented in his last petition and also the deposition given by Genoveva de Calogne, widow of Antonio Chouriac, in which she clearly acknowledges the 509 pesos demanded by Darcantel as due him, in virtue of which and the deficit having been paid to the Royal Treasury as a result of the balancing of the accounts of the estate of the deceased, his Honor orders, so as to obviate greater costs and to conclude this suit, let the present Escribano pay Henrique Darcantel the 509 pesos from the money which by the disposition of this Tribunal he holds in his possession under the corresponding receipt that must be filed in these proceedings at the time of delivery.

The receipt.

Henrique Darcantel acknowledges to have received 436 pesos. Later he petitions, stating that by the last decree of the Court the Escribano was ordered to pay him 509 pesos from the funds belonging to the Chouriac succession, he has received 436 pesos only, because this is all that remained in his possession, which is credited on the receipt filed with the proceedings. He asks to have the widow ordered to pay him the remainder, or 73 pesos, which have not yet been turned over to him. De Reggio rules: Let the present Escribano certify what payments he has made from the funds Jacinto Panis, late Alcalde Ordinario, decreed should be maintained in his possession at the disposition of this Tribunal, attaching to the principal records of the succession the accounts to which the aforesaid funds were delivered, so by this means the interested parties will be satisfied and the Escribano relieved from all responsibility, and done let all be delivered to the Court.

Rafael Perdomo certifies.

Rafael Perdomo certifies that on February 14th of this year, pursuant to a decree of Juan Ventura Morales, he delivered to Pedro Favrot 900 pesos, for which he gave bond and signed a formal receipt to be placed at the end of the proceedings. By decree pronounced on September 9th of this year by Francisco Maria de Reggio, Judge of this cause, he paid into the Royal Coffers 734 pesos 3 reales, the deficit the late Mr. Chouriac had to make good to the Royal Treasury. And by the same Alferez de Reggio, at the instance of Henrique Darcantel, on the 15th of this September he was ordered to pay from the money in his possession, 509 pesos which was judicially demanded from the estate of the deceased. This he did not do, except to pay 436 pesos which was all the money he held, as the document shows, which was ordered attached to the principal proceedings. These three sums paid amount to 2070 pesos, which are the same as were delivered to him, together with a note of 300 pesos signed by Captain Antonio de Oro and an order signed Chouriac, by which the bearer of it would receive 330 pesos. These papers he reserves in his possession at the disposition of this Tribunal, and in fulfillment of the foregoing decree he sets this down as a matter of record.

Alferez De Reggio decrees.

Alferez Real Francisco Maria de Reggio decrees: Considering what is represented by Henrique Darcantel and also what has been certified to by the present Escribano concerning the funds placed in his keeping by a decree of Jacinto Panis, and the payments that he has made from same to the extent of 2070 pesos, which was the total amount existing, His Honor orders the widow of Antonio Chouriac to be notified to pay to Henrique Darcantel, within 5 days, the 73 pesos remaining due of the 509 pesos he has demanded. This is the end of this suit, which evidently belongs to another proceeding.

September 14.

Estephania de Gouyon, widow of J. B. Garic, vs. Santiago Visente, for a declaration.

No. 3418. 2 pp.

Court of Alcalde Jacinto Panis.
Assessor, Juan del Postigo.
Escribano, L. Mazange.

This case, involving a declaration concerning the payment of a certain sum of money, contains nothing of particular importance.—W.P.

Estefania Goyon, widow of Juan B. Garic, states that in order to prepare her action it is convenient to her right to have Santiago Vicente, under oath, declare to whom he delivered the 1500 pesos he promised to lend her, at interest, to tell her the name of the person, and done give his declaration to her to use to enforce her rights. She further asks to have him ordered to say who was present when he delivered the money and at what time it was delivered. Panis, on Postigo's advice, rules: Let him swear and declare to the tenor of the foregoing petition, and done let it be delivered as requested.

Santiago Vicente declares he delivered the 1500 pesos mentioned in the petition to Mrs. Garic's slave, when he did so there was no one present, but at the time the obligation made out in his favor for the said amount was handed to him. This ends the record.

September 17.

Louisa Roquigny, Widow Lavergne, petitions to sell her slave.

No. 3450. 14 pp.

Court of Alcalde Jacinto Panis.
Assessor, Postigo.
Escribano, Mazange.

This case is interesting to the student of Louisiana law as illustrating the procedure necessary to secure legal permission to sell a slave belonging to a widow, who owed obligations to her minor children, from the succession of her deceased husband.—W.P.

The record opens with four exhibits. The first is a receipt dated April 5, 1776, signed Nicolas Lavergne, by which he acknowledges to have received from Madame Janot Lavergne 63 pesos, proceeding from the succession of the deceased Janot, his father, for which he gives quittance. The second is also a receipt dated February 27, 1776, signed Nicolas Musirmere and M. Timbault, which is an acknowledgment of a payment of 63 piastres paid by Madame Janot, the widow, for Mr. Bartellomy Lavergne, proceeding from the succession of the deceased Janot, his father; they give quittance for this amount to Madame Janot. The third is a certified copy of the act of partition of the estate of Jean Lavergne for Louise Roquigny, his widow. It is an account and partition of the effects, namely, movables, negroes, live stock, and immovables which took place on his plantation at Saint John the Baptist of the German Coast, and of Marie Jeanne La Clef, his first wife, with Louise Roquigny, second wife

of Jean La Vergne, now his widow, and the children of the first marriage, hereinafter named. This partition takes place before Robert Robin de Logny, Captain and Judge of the Parish of St. Jean Baptiste des Allemands. The widow is assisted by her brother-in-law, Baptiste Sezan, husband of her sister, Charlotte Roquigny, who has given bond for her. This document goes into detail as to the effects sold and divided, stating what represents the community estate. The fourth and last exhibit is a certified copy of the quittance for payment made of the full amount of the succession of Jean La Vergne, dated February 18, 1775. This quittance is drawn up in favor of the widow's two step sons and her own minor children. The payments were made in the presence of the Captain Commander of the Post.

The suit proper begins on page 12, with a petition by Luisa Roquigny, in which she states it has come to her notice that Juan Bautista Austive has gotten out an injunction to prevent the sale of her slave, claiming he must not be alienated. He has nothing to represent in the matter, because the negro is her own property as the documents here attached show. She prays the Court to examine them. Austive is the bondsman for the part that belongs to the four La Vergne heirs, but they have already been paid, therefore his responsibility is ended. Regarding the 180 pesos belonging to her three children born during her married life with Juan La Vergne, as well as the 200 pesos that must come to the first and second sets of children, she has given her dwelling house as security which will be turned over to them at her death. Therefore may it please Alcalde Panis to raise the said interdict (injunction) and to accept the said mortgage on her house so she may be able to sell her negro. Panis, on Postigo's advice, receives the documents. And in a second ruling he states, after an examination of these said documents, let Mrs. Roquigny be permitted to sell the negro she says belongs to her and let the mortgage on her house be accepted which she offers as security for the 180 pesos for which she is responsible to her own children as their tutrix and for the 200 pesos also due them as well as her husband's sons by his first marriage. This ends the record.

September 18.

Maria Rillieux petitions for a comparison of signatures of the late Andres Bodaille.

No. 3456. 3 pp.

Court of Alcalde J. Panis.
No Assessor named.
No Escribano named.

Maria Rillieux presents a slip of paper which contains a written list of a number of articles she commissioned Mr. Bodaille to buy for her in Santo Domingo and for which she gave him 100 piastres to cover costs. He receipts for this amount. She then asks for a comparison of signatures by the Escribano, the one in her possession with the official ones that

This case illustrates the procedure followed in the verification of the signature of a deceased person.—W.P.

he has in the records in his office. Petition granted. The Escribano certifies that he has several signatures in his Archives made by Bodaille, and having made a comparison of the one presented by Maria Rillieux with those he has he finds them identical. A marginal note states that a copy of these proceedings were given to Maria Rillieux.

September 18.

Pedro Rousseau petitions for the verification of a signature.

No. 3451. 6 pp.

Court of Alcalde
Jacinto Panis.
Neither the Assessor nor the Escribano signing.

This case illustrates the procedure followed in verifying the signature on a bill of sale of a slave.—W.P.

The first entry is a private bill of sale by which Mr. Sallenant declares that he sold to Pierre Rousseau, Officer of the Marine in the service of His Catholic Majesty, a mulattress named Maria Noel, aged 22, a Creole of Caillou plantation, for 3000 livres paid in cash, November 15, 1779. Having presented the above, Pedro Rousseau, who is Captain Commander of the King's Brigantine, "The Galveston", sets forth that it is convenient to his right to have the signature on the private piece of paper verified. He begs to present witnesses who will declare, under oath, that the said signature is Mr. Sallenant's. He further asks to have them testify if it is not true that since his arrival in this Port from French Santo Domingo with His Majesty's ship he has had a very dangerous illness, having been ill for about two months and a half without being able to leave his bed. During this time he was waited on with all care by his mulattress slave, mentioned in the aforecited piece of paper. Let them also declare that all of the abovesaid is publicly and generally known, and done let the Court interpose its authority and judicial decree and give him a certified copy, when he will promptly pay just and due fees. Panis rules accordingly.

The witnesses, Pedro Brocas, Joseph Bastard and Augustin Magonty, each in a separate declaration, sets forth that the signature on the paper is Mr. Sallenant's, which they recognize because they have had many business dealings with him. Mr. Rousseau has had a very grave illness since he came to the city. During his sickness he was unable to rise from his bed and was waited on by his slave, Maria, with all care until he was on his feet again, which is generally and publicly known. On the strength of this testimony, Jacinto Panis rules: For its greater validation and force he must interpose and does interpose his authority and judicial decree and orders this party to be given the certified copy he requests upon the payment of just and due fees. This ends the proceedings.

September 23.

Joseph Montegut asks for a comparison of signatures of the late Andres Bodaille.

No. 3433. 3 pp.

Court of Alcalde
Jacinto Panis.
Neither the Assessor nor the Escribano are mentioned.

This case illustrates the procedure in verification of the signature of an individual since deceased.—W.P.

Joseph Montegut, Chief Surgeon of this place, presents a slip of paper, signed A. Bodaille, which is an acknowledgment that he has received 500 piastres from Mr. Montegut to purchase merchandise for him in Santo Domingo at current and lowest prices. The petitioner asks to have a comparison of signatures made by the Escribano, and if the one on his exhibit conforms, let the original be returned to him and he will promptly pay all just and due fees. Panis rules accordingly. The Escribano does not sign his certification that in the register in the public office in his charge there are a number of Bodaille's signatures, and upon comparison with the one on the private paper he says they were made by the same hand. A note states that a copy of these proceedings was given to Josef Montegut.

September 24.

Juan Surriray de la Rue asks for a comparison of signatures of the late Andres Bodaille.

No. 3459. 3 pp.

Court of Alcalde J. Panis.
No Assessor.
Escribano, L. Mazange.

This case is another illustration of the procedure in verification of the signature of an individual since deceased.—W.P.

The record opens with a letter written to Mr. Suriray de la Rua, relative to remittances, and signed A. Bodaille. The petitioner asks to have the signature compared with the official ones in the Escribano's archives, and done return the original to him, he agreeing to pay promptly all just and due fees. Petition granted. Leonardo Mazange certifies that he has compared the signature on the letter with those in his file and finds them identical. A marginal note stipulates that a copy of these proceedings has been given to Juan Suriray de la Rua.

October 3.

Joseph Malinge petitions to have the signature on a note he presents verified.

No. 3437. 4 pp.

Court of Alcalde J. Panis.
Neither Assessor nor Escribano named.

Joseph Malinge presents a receipt for 250 piastres to be used to the best advantage and safe from peril. Signed, Bedard. He asks to have this receipt verified by the witnesses he will summon, and if their testimony conforms, he prays the Court to interpose its authority and judicial decree and to order a certified copy of

this case illustrates the procedure in verifying the signature on a note.—W.P.

these proceedings given to him, for which he will promptly pay all just and due fees. Petition granted. Francisco Mayronne and Juan Labatut, each in a separate declaration, verifies Bedard's signature which is well known to them because of their business intercourse with him. Panis rules: Considering the information given, for its greater validation and force he interposes and does interpose his authority and judicial decree. Let this party be given the certified copy he asks, upon the payment of just and due fees.

October 19.

Action brought by Juan Lajoy to prove that he does not owe anything to the Royal Treasury and to have the bond against him there cancelled.

No. 39. 2 pp.

Court of the Intendant General, Martin Navarro.
No Assessor.
Escribano, R. Perdomo.

This suit, to have cancelled the bond given for shipping goods to New Orleans but which never were delivered at that port, is interesting as an illustration of the commercial practices of the period, the methods of enforcing the customs regulations, and for the hazards of commerce on account of war and unavoidable accidents on the voyage.—W.P.

Juan Lajoy, resident of the Post of Illinois, sets forth that as owner of the brigantine, "The Louisiana," Juan del Oyo, Captain, which sailed from Bordeaux to Santander in 1779, therefore he took out a Spanish passport, only, as he was to come to New Orleans immediately. The cargo of the ship consisted of 322 barrels of flour, 7 bolts of cloth, handkerchiefs and linens, for all of which Bernardo Reygada, outfitter of the brigantine, paid duty at the Custom House of Santander, as is evident from the note duly presented. The ship having cleared from Santander for this river it ran into several storms and was obliged to put in at Santo Domingo, France, where they sold, judicially, 200 barrels of flour to pay for repairs and other expenses, this occasioned delay and distress to the ship. They sailed for New Orleans with the remainder of the cargo under bond for the respective duties that should be paid to this Administration General of Royal Revenues, but he really does not owe anything. Therefore he prays the Court to certify to the fact so that with the said document, he can have the bond cancelled, when he presents it in the Port of Santo Domingo. He further states that on the seventh day after he left Santo Domingo his ship was captured by the English so for this reason it has never arrived in New Orleans. On the margin of this petition Martin Navarro rules: Let the Administrator General of this Province be informed of the tenor of this Instance so that he may advise what may be suitable.

Joseph de Villavaso states that in consequence of the foregoing decree he must inform His Lordship that this party does not owe anything to the Royal Treasury, considering the entry of the effects into this place has not been verified. The ship, by accident, was conducted to Santo Domingo, France, where a part of the cargo was sold to obtain funds to make repairs. The rest was seized, together with the brigantine, by enemies of the Crown. Therefore His Lordship may make any disposition he may judge suitable for the petitioner relative to a cancellation of the bond which exists in Santo Domingo, thus relieving Juan de Hoyo, Captain of the ship, from all further responsibility concerning the permit he received from the Custom House of Santander.

Navarro rules: Considering the foregoing information, let this party be given the full registered document he mentions, and in virtue of it the Judge who has heard this cause is pleased to order the bond cancelled which was executed to safeguard the Royal interests, and for his own protection let him be given the certified copies he has requested.

October 24.

Succession of Enriqueta Gauvin, wife of Antonio Blanc, inventory and valuation of her estate.

No. 3416. 3 pp.

Court of Alcalde
Jacinto Panis.
No Assessor.
Escribano, L. Mazange.

This suit illustrates the procedure in settlement of a succession, when the heirs were absent from the colony.—W.P.

This is just a fragment. It consists of the official announcement of the death of Henriqueta Gauvin, wife of Antonio Blanc, who died leaving absent heirs. The Escribano certifies to the death and collects the keys. Jacinto Panis orders a search for the will. Rafael Perdomo and Leonardo Mazange, each in a separate certification, declare that no will authorized by the deceased is filed in their Archives.

October 26.

Vicente Rillieux asks for a comparison of the signature of the late Andres Bodaille.

No. 3454. 3 pp.

Court of Alcalde J. Panis.
No Assessor.
Escribano, L. Mazange.

This case illustrates the procedure in verification of the signature of an individual since deceased.—W.P.

The first entry is an acknowledgment, signed A. Bodaille, to the effect that he has received 500 piastres from Vicente Rillieux, who asks to have the signature compared with others on file in the Escribano's office, and done let the original be returned to him with a certified copy of these proceedings, for which he will promptly pay all just and due fees. Petition granted. Leonardo Mazange, after making comparison, declares the signatures all identical. A marginal note states that a certified copy of these proceedings was given to Vicente Rillieux.

October 30.

Estefania Goyon, Widow Garic, asks for a comparison of signatures of Mr. Villecrozes.

No. 3420. 3 pp.

Court of Alcalde J. Panis.
No Assessor.
Escribano, L. Mazange.

This suit illustrates the procedure for the verification of a signature.—W.P.

Mrs. Garic presents a promissory note for 6000 livres dated October 13, 1763 made in favor of Mr. Garic and signed Villecroze. Below is written, recorded in the registry of the Greffier's office of the Superior Council of the Province of Louisiana, on page 15, signed Henry Gardrat. She asks to have the signature thereon compared with others in the Escribano's office and the original returned to her with a copy of these proceedings, for which she will promptly pay. Petition granted. The Escribano declares the signatures to be those of the same person.

November 2.

Executory Process, Guillermo Duverge vs. Carlos Latour.

No. 20. 11 pp.

Court of Governor
Esteban Miro.
Assessor, Postigo.
Escribano, R. Perdomo.

To collect a debt.

This suit illustrates the procedure in collection of a debt, involving a disagreement between debtor and creditor as to whether the payment should be in cash or in an equivalent of commodities, as per contract.—W.P.

The plaintiff claims the defendant owes him 500 pesos for a slave, named Telemaque, sold to him to be paid for with boxes to be used for shipping sugar, to be delivered to Santiago Beauregard, and although three years have passed he has not yet complied with his obligation. Therefore he asks for a writ of execution against all or any property belonging to Carlos Latour, the one-tenth and costs. Esteban Miro, on Postigo's advice, orders the writ of execution issued.

Next on file is a certified copy of the Notarial Act of Sale, dated New Orleans, February 6, 1778. It reads in part, that Guillermo Duverge sells to Carlos Latour a negro named Telemaque, of the Congo Nation, aged about 35, free of all mortgages and liens, to which the present Escribano as annotator of mortgages testifies after an examination of his books. The sale is for 500 hard pesos to be paid in chests for packing sugar, to be delivered to Santiago Beauregard, and just as soon as the boxes will be delivered the vendor will surrender all rights to ownership in the negro. The vendee, here present, accepts the sale.

Page 8 is the writ of execution signed by Esteban Miro and countersigned by Rafael Pedromo. Deputy Sheriff Nicolas Fromentin reports to the Escribano of this cause that he served the

foregoing writ, but found nothing belonging to the defendant that he could seize, so he leaves the writ open to be served at some more suitable time.

Carlos Latour, through Francisco Broutin, answers the suit saying: Nicolas Fromentin, Deputy Sheriff, went to his plantation with a writ of execution against his person and estate for 500 pesos due for a negro purchased from Guillermo Duverge. In regard to this claim he does not owe a half a real. His obligation called for payment of the 500 pesos in boxes for sugar, to be delivered to Santiago Beauregard. These boxes he has offered many times, but Beauregard would not receive them, always asking for money instead. For about four months Mrs. Duverge has been demanding cash payment but he has told her he will pay promptly according to the stipulations of the obligation. Two months ago Mr. Duverge wrote to him about this matter and he gave him the same answer. It was a great surprise to him to learn that he had taken the disagreement to this Tribunal, claiming that he, Latour, would not pay at the date of maturity, when he has offered to pay as per agreement as may be proven. Therefore he prays to have the writ of execution revoked and to order the interested parties to go to his plantation to receive the boxes within a short space of time, with a warning that the delivery will be made at their expense and risk through the General Receiver. He asks to have his opponent condemned to pay all costs, because he has not framed his instance in conformity to the obligation. He further petitions, saying that since his plantation is some distance away he has appointed Mr. Broutin to defend this suit for him. Governor Miro, on Postigo's advice, decrees: Notify Carlos Latour to deliver, within 6 days, the full sum of 500 pesos in boxes for sugar, to Guillermo Duverge, because he is debtor for this amount. For which purpose Duverge must go to Latour's plantation to receive the boxes, with a warning that if he does not do so within the time specified a writ of execution will be issued in due form. Let Latour be condemned to pay the costs of these proceedings. This ends the suit.

November 7.

Sale of a negress made at the request of Manuel Solis, agent for Morgan Eduardo.

No. 24. 8 pp.

Court of Alcalde
Jacinto Panis.
No Assessor.
Escribano, R. Perdomo.

Manuel Solis sets forth that in virtue of the certified copy which duly accompanies this, Morgan Eduardo, an Englishman, conferred his power of attorney on him, and in consequence of it he finds it convenient to the interests of his constituent to sell, at public auction, three of his slaves. Therefore may it please the Court to grant him a permit to do so.

This suit illustrates the procedure involved in securing a permit to sell slaves, by an agent of the owner.—W.P.

Petition granted, upon the payment of all just and due fees. This is followed by a certified copy of the Notarial Act of Procuration, dated November 5, 1782, which ends the proceeding.

November 9.

Francisco Mermillon vs. Pedro Teyniere.

No. 3434. 6 pp.

Court of Alcalde
Jacinto Panis.
No Assessor.
Escribano, L. Mazange.

To have certain funds turned over to him.

This suit illustrates the procedure necessary to secure the payment of funds to one member of a partnership, when the debtor claimed that the funds were due to the other member of the partnership.—W.P.

Francisco Mermillon, a merchant of this city, in partnership with Joseph Capuran, as appears from the private paper duly presented (not filed with the record), states that it is convenient to his rights to have Pedro Teniere, under oath, declare whether or not he has received a certain sum of pesos from Claudio Chabot, proceeding from a shipment of goods belonging to his partner. He further asks that when the declaration will have been made Mr. Teniere will be notified to hold in his possession, at the disposition of the Court, the funds belonging to Joseph Capuran. Panis rules: Let the documents presented by this party be accepted and let his opponent swear and declare as petitioned, and done deliver the declaration to him. In the secondary petition: As it is prayed.

Pedro Teniere declares it is true that he received 912 pesos 1½ reales, in accordance with a letter directed to him by Messrs. Devasquies & Boucharlat, Merchants of French Santo Domingo, as empowered by Joseph Capuran for Claudio Chabot, a merchant of this city.

Francisco Mermillon again petitions, saying as it appears from the facture he duly presents and Teniere's declaration the funds are his, therefore he asks to have the money delivered to him under a corresponding receipt. Panis rules: Notify Pedro Teniere to deliver to this party, as Joseph Capuran's partner, the funds he has in his possession, belonging to the latter, under the corresponding receipt.

The plaintiff states that for purposes convenient to him and to use when suitable it will be necessary to have them return to him the documents he has presented and to have the Escribano give him a copy of these proceedings in due form, for which he will promptly pay all just fees. Petition granted. Francisco Mermillon receipts for the documents. The end.

November 12.

Petition to have witnesses called to prove her legitimacy and purity of blood made by Adelayda Amelot.

No. 35. 26 pp.

Court of Alcalde
Jacinto Panis.
No Assessor.
Escribano, R. Perdomo.

This suit illustrates the procedure necessary under the Spanish system in proving legitimacy and purity of blood of the petitioner. Such cases were quite common under the Spanish regime in Louisiana.—W. P.

The first entry is a marriage certificate issued by Father Cirilio de Barcelona, Vicar General and Ecclesiastical Judge of the Province of Louisiana, Priest of the Parish Church of Saint Louis of New Orleans, to the effect that on December 19, 1751, Father Matias, Capuchin Priest, married Hipolit Amelot de la Routille, Captain of a detached Company of Marines of Paris, Parish of St. Jean, son of Jean Batiste Amelot de la Routille, late Engineer for the King, and Marie Anne le Moine, for one part, and Felicite Villar de Breuiel, of this Parish, daughter of the late Louis Villar de Breuiel, Officer of Militia and Contractor of the Works for the King, and Felicite de la Chaise. The register is signed by Father Matias; Hipolit Amelot; Felicite de Breuiel; Charles La Boulaye; Villar; Darensbourg de la Chaise; Villar; de la Chaise.

The second exhibit is a certified copy of an act of baptism, dated May 8, 1764, to the effect that Father Stanislas, Capuchin, baptized Marguerite Adelaide, born the 19th of April of the said year, daughter of Hipolite Amelot, Chevalier of the Royal and Military Order of St. Louis, Engineer in Chief and Inspector of the Fortifications of Santo Domingo, and of Marguerite Felicite Du Breuiel. The godparents were Louis Villar, Officer of Infantry, a maternal uncle, and Marguerite de la Chaise, maternal grand-aunt, of the child. The register was signed by Father Stanislas, Capuchin Priest; Louis Villar; de la Chaise; Hipolite Amelot, the father.

Adelayda Amelot asks to have these two exhibits translated from French into Spanish by Antonio Mendez. Petition granted. Mendez is notified, qualifies and makes the official translation of the two documents. She then propounds her eight questions to be answered by the witnesses she will present, as it is convenient to her right to prove the legitimacy of her birth and the purity of her blood, life and habits.

1st. Is she not the legitimate daughter born of the lawful marriage of Captain Hipolite Amelot, now dead, and Feliciana Du Breuiel, the former a native of Paris and the latter of this city? Did they not rear, educate and support her in their house, and did they not call her daughter and she call them her parents?

2nd. Was her deceased father not the legitimate son, born of the lawful marriage of Juan Bautista Amelot de la Routille and of Mariana Lemoin, natives of and residents of Paris, who procreated, educated and fed him in their company and treated him as a son and he treated them as his parents and that the forenamed were her grand parents?

3rd. And in the same manner is it not true that the aforesaid Feliciana Du Breuiel, her mother, is the legitimate daughter born of the lawful marriage of Luis Villar Du Breuiel, native of Paris, and Felicite de la Chaise of this city, who had her during their married life, which they contracted before the Church, and that they reared and educated her with paternal love and kindness, treating her as a daughter and she treating them as her parents and that they are her grand parents?

4th. Is it not also true that her father, Hipolite Amelot, came to this city during the French Domination with the Rank of Captain of Infantry in the service of His Most Christian Majesty in this Province?

5th. And likewise does it not appear that he afterwards became a Knight of the Military Order of St. Louis and Engineer in Chief of this Province, the duties of which employment he discharged with the greatest satisfaction to the public and that he continued to hold the same office when the Colony was transferred to His Catholic Majesty?

6th. And in due time was he not elected Alcalde Ordinario of this city, in which office he accredited himself with exactitude and discharged his duties in a most disinterested manner?

7th. Is it not also true that she always maintained and did maintain herself under the Patria Potestad of her said parents, guarding her honor, modesty and conduct in her unmarried state, performing acts of devotion and Christianity in the Catholic Church?

8th. Is it not generally and publicly known that her parents and paternal and maternal grandparents have been and are good Christians without any mixture of bad races of Moors, or Jews, nor have they been newly converted to our Holy Catholic Faith. That they have not been of negro or mulatto cast nor punished by the Holy Office and have never held vile or forbidden offices and have obtained and claimed only what was most honorable?

Panis rules accordingly.

The witnesses, Francisco Devilliers, Francisco Maria de Reggio, Luis Bilar (signing himself Joseph Village), Guido Dufossat, all answer the eight questions in the affirmative. Panis orders the records of the case sent to the Sindico Procurador General, so that he may set forth what corresponds to his charge.

One signing "Astier", Sindico Procurador General of this city, upon examination of the evidence produced for Adelayda Amelot so as to qualify as to her legitimacy, purity of blood, life and habits says: That in fulfillment of the duties of his office he has examined the records attentively and finds all in conformity and drawn up according to law, and for this reason he does not offer any objections to what His Honor may be pleased to declare.

Panis decrees: Considering the foregoing evidence produced for Adelayda Amelot in which her legitimacy, purity of blood, good habits and commendable personal circumstances are made to appear fully and also considering what is represented by the Sindico Procurador General and all the rest that has been deemed worthy of consideration, His Honor says: That whereas in the form that has place in law he approves and does approve the aforesaid evidence, hereby declaring the aforenamed Adelayda Amelot as the legitimate daughter of her said parents and as also a distinguished person, according to and in conformity to what has been proven, and for its greater validation and force he interposes and does interpose his authority and judicial decree, ordering that they deliver the certified copies that have been requested, upon the payment of just and due fees, and that costs be taxed by the public taxer who must be notified so that he may accept and take oath in the accustomed form. Luis Liotaud qualifies and taxes the costs at 18 pesos.

The last entry, with no explanation whatever, is a certified copy of a baptismal record dated August 11, 1765, of Francois, born July 5, 1764, son of Pierre Villaneuv Dutillet, Captain of Infantry, and Jeanne Maret. The god-parents were Francois Simars de Bellile and Magdelenne Avangé Dominich, Widow Dabbadi.

November 13.

Maria Marta Murray vs. Pedro Duverge, to collect 2500 pesos.

No. 25. 9 pp.

Court of Alcalde
Jacinto Panis.
Assessor, Postigo.
Escribano, R. Perdomo.

This is evidently a part of another case. Maria Marta Murray, in the suit which Oliver Pollock prosecutes against the estate of Francisco Morfi (Murphy) to collect a sum of money, sets forth that they have delivered the records of the cause consequent to the representation made in her foregoing petition, and having examined them carefully she does

This suit is interesting as illustrating the procedure involved in the collection of a debt which was connected with the settlement of a succession.—W.P.

not find any basis for the claim put forward by Juana Hup against the cession Daniel Clark has made in the petitioner's favor for 2500 pesos she delivered to him on February 8th of last year, before Notary Andres Almonester. In the act drawn up by him it was explained that the above cited sum would be paid to her by Pedro Duverge on November 16th of the same year, as derived from the purchase made by Pedro Duverge of the plantation which was a part of the estate left by Morfi, as the bond shows that was drawn up and registered on page 35 for the security of her credit. This said bond was signed by Antonio Gilberto Maxent, as security for Duverge. In consideration that her aforesaid credit has no connection with the demand made by Pollock in his suit brought against her, because it is of an entirely different nature and more privileged, although when given and not conceded it may have had some relation. Therefore may it please Alcalde Panis, considering what she has set forth, to order issued in her favor a writ of execution against all, or any, of Pedro Duverge's property for the sum of 2500 pesos, its one-tenth and costs. She further prays, in order to prevent this suit causing embarrassment to the one established by Pollock, let it be run in a separate copy book from the other proceedings of cession and bond which she has mentioned in her principal petition. Alcalde Panis, on Postigo's advice, rules, (considering the first request): Let this party present the written documents of obligation and a decree will be rendered; and as to the second petition: As it is prayed.

Certified copy of the cession, dated New Orleans, February 8, 1781, before Andres Almonester and witnesses appeared Daniel Clark, who acknowledged to have received from Maria Murray 2500 pesos which Pedro Duverge owes, as appears from the document executed before me, the undersigned Notary, November 16, 1779, in favor of the grantor, as proceeding from the sale of a plantation left by the late Francisco Murphy.

Certified copy of the bond, dated New Orleans November 16, 1779, before Andres Almonester and witnesses there appeared Pedro Duverge and Antonio Gilberto Maxent, the first as principal, the second as bondsman, obligating themselves to pay, within one year, dating from this day to Daniel Clark, as heir to Francisco Morphy (Murphy), the sum of 2500 pesos for the plantation belonging to the estate of the said Murphy which was adjudicated to Pedro Duverge, as highest bidder at the sale held this day before the present Escribano.

Having presented these two copies as requested by the Court, the plaintiff petitions for a writ of execution. Panis, on Postigo's advice, orders the writ of execution issued against Pedro Duverge's estate for 2500 pesos, the one-tenth and costs, caused or to be caused, up to the real and effective payment. A marginal note stipulates that the writ which was ordered has been issued.

The writ of execution. Nicolas Fromentin, Deputy Sheriff, reports to the Court that he served the writ but found nothing he could seize, so he left the writ open for some other time when it might be enforced. This ends the proceedings.

(To be continued)